

**Part 4 of Attachment A to City Staff Report
for City Council Meeting on June 17, 2020**

*includes PSA attachments 21 through 24

ATTACHMENT 21 TO PURCHASE AND SALE AGREEMENT

Declaration of Property Development Restrictions and Permitting

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Cybele Thompson,
Director, Real Estate Assets Dept.

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
REGARDING DEVELOPMENT AND PERMITTING OF
SDSU MISSION VALLEY PROPERTY**

This Declaration of Covenants, Conditions, and Restrictions Regarding Development and Permitting of SDSU Mission Valley Property ("**Declaration**") is dated as of _____, 2020 ("**Effective Date**"), and is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and the BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, the State of California acting in its higher education capacity, on behalf of San Diego State University ("**CSU**").

RECITALS

The City and CSU enter into this Declaration with reference to the following facts and circumstances:

A. The City's voters approved a citizens' initiative measure, commonly known as Measure G, on November 6, 2018, governing the City's sale to CSU of certain real property referred to therein as the "Existing Stadium Site" (defined as the "**CSU Property**" in Section 1).

B. Measure G is comprised of two main components: (i) Sections 1, 2, 4, 5, 6, 7, and 8 of the citizens' initiative, which describe, among other things, the purpose, intent, and findings supporting the citizen's initiative; and (ii) Section 3 of the citizens' initiative, which adds new section 22.0908 to the San Diego Municipal Code ("**Section 22.0908 Conditions**"). Measure G states that the CSU Property is needed by CSU/SDSU for "Bona Fide Public Purposes," as that term is defined in the Section 22.0908 Conditions, and for that reason the City will sell the CSU Property to CSU in accordance with the City Charter, but only if such sale is in compliance with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in Measure G.

C. Measure G does not obligate CSU to purchase the CSU Property or take any other actions related to the CSU Property, if CSU chooses not to purchase the CSU Property. However, Measure G requires the City to ensure that the City's negotiated sale of the CSU Property complies with Measure G.

D. California Education Code section 66606 vests CSU with "full power and responsibility in the construction and development of any state university campus, and any buildings or other facilities or improvements connected with the California State University." Section 22.0908(x)(12) states "Nothing in this Initiative abrogates, or is intended to abrogate, the authority of the Board of Trustees of the California State University." CSU is the State of California acting in its higher education capacity, and is generally exempt from local and regional ordinances, regulations, policies and rules, including, without limitation, zoning and land use regulations, when its development, construction, facilities, and uses are in furtherance of its governmental purpose, unless applicable Law specifically says otherwise. Without waiver of CSU's standing and legal authority as a state agency, and to enable the City to ensure that the sale of the CSU Property complies with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in Measure G, CSU agrees to be bound by the terms and conditions set forth in this Declaration, and the Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 2020 between the Parties ("**Purchase Agreement**"), and its attachments.

E. In light of the circumstances stated in Recitals A through D above, the Parties negotiated and entered into the Purchase Agreement and related agreements pursuant to which CSU agreed, strictly as a matter of contract, to develop the CSU Property subject to terms and conditions in the Purchase Agreement and related agreements, and in a manner satisfying the City's concern that the sale must comply the Section 22.0908 Conditions and fulfill the intent and purposes outlined in Measure G. By entering into these agreements, CSU is not waiving its standing and legal authority as a state agency, though it agrees, due to the unique circumstances at hand, to be contractually bound by the terms of such agreements. The Parties negotiated the terms of the Purchase Agreement and related agreements in response to the local voters' approval of Measure G and intend all such agreements to be consistent with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G.

F. San Diego Municipal Code section 22.0908(c) requires the City to ensure that the sale and ultimate development of the CSU Property provide for CSU's construction of the Project (as defined in Section 1.94), which consists of various improvements of local and regional public benefit on or about the CSU Property.

G. The City and CSU enter into this Declaration to memorialize their mutual understandings with respect to the following matters: (i) CSU's primary role and the City's limited role in issuing permits and approvals with respect to the implementation of the Project; (ii) CSU's agreement to cause the construction of certain public improvements on the CSU Property of a predetermined total value in lieu of causing the payment of certain development impact fees to the City in connection with the Project; (iii) CSU's agreement to cause the payment and transmittal to the City of certain development-related fees in connection with certain components of the Project; and (iv) CSU's agreement regarding the payment and reporting of certain applicable taxes for the City's benefit in connection with the Project.

COVENANTS, CONDITIONS, AND RESTRICTIONS

In consideration of the promises and covenants set forth in this Declaration, the City and CSU agree as follows:

1. DEFINITIONS AND SECTION REFERENCES. All initially capitalized terms used in this Declaration shall have the meanings set forth in this Section 1 or, if not set forth in this Section 1, where such term first appears in this Declaration, unless the context of usage clearly requires another meaning. All section references in this Declaration are to particular sections of this Declaration, unless otherwise expressly stated.

1.1 ADA Settlement Agreement. The Settlement Agreement and Mutual Release dated February 12, 2001, as amended by the First Amendment thereto dated September 2, 2005, in the matter of *Beverly Walker, et al. v. City of San Diego, et al.*, U.S. District Court Case No. 97-cv-1547 BTM (LSP), relating to alleged violations of the Americans with Disabilities Act with respect to the operation and maintenance of the Existing Stadium.

1.2 Additional Development Fees. Collectively, the Housing Impact Fee and the Civic Enhancement Fee, except that: (a) all such fees shall apply only to the development of Non-Government Use facilities and improvements; and (b) the CSU Entities will be exempt from payment of all such fees with respect to the development of Government Use facilities and improvements. The City considers the RTCIP Fee to be an Additional Development Fee, but specific to this Project, CSU believes it is exempt from the requirement to pay the RTCIP Fee as further described in Section 4.5.

1.3 Additional Park Areas and Active Recreation Space. A minimum of 22 acres of the CSU Property to be developed and used for population-based park facilities and publicly-accessible active recreation space, which may include practice, intramural, intermural, and recreation fields, all as depicted on the Project Site Plan.

1.4 Additional Park Improvements. The park and recreation improvements to be installed or constructed upon the Additional Park Areas and Active Recreation Space.

1.5 Additional Park Future Total Estimated Costs. A future estimate of the total cost to design, permit, and construct the Additional Park Improvements (or to complete the construction of the Additional Park Improvements, if construction has been partially completed as of the time of the future estimate), and to facilitate long-term management and maintenance of the completed Additional Park Improvements, including a reasonable contingency amount for all cost components, as determined by the Expert Cost Estimator in accordance with Section 4.3.

1.6 Additional Public Benefits. Certain public benefits and Project elements that CSU will provide as part of CSU's development and operation of the Project which are above and beyond those benefits and components specifically described in Measure G, including the Section 22.0908 Conditions. The covenants described in Section 2 include the Additional Public Benefits.

1.7 Affordable Housing Units. Any residential dwelling units constructed on the CSU Property that are made available for occupancy or sale only to income-restricted households in accordance with the Declaration of Affordable Housing Restrictions.

1.8 Approval. Any license, permit, approval, consent, certificate, ruling, variance, or authorization, or any amendment to any of the foregoing, as shall be required under any applicable Law: (i) to commence, perform, or complete the construction of the Project on the CSU Property; or (ii) for a Third Person to complete or operate any activity or business on the CSU Property.

1.9 Bona Fide Public Purposes. Defined by Measure G at Municipal Code section 22.0908(x)(1) as “a good faith or genuine use or uses for public or government purposes such as public university uses or facilities; institutional uses or facilities; offices; buildings; stadium, park, open space, trail, and recreation uses and facilities; academic uses and facilities; public parking; faculty, staff, student and residential market-rate and affordable housing; hotel uses and facilities to support university goals and objectives; and public-private partnership support uses and facilities, including but not limited to commercial, neighborhood-serving retail, research, technology, development, uses, individually and cumulatively, promote or facilitate SDSU’s higher education mission, goals, and objectives.”

1.10 Business Day. A day other than Saturday, Sunday, or any day on which (i) federally-insured banks are closed, (ii) the County Recorder is closed or (iii) the administrative offices of either the City or CSU is closed.

1.11 Campus Master Plan. The San Diego State University Mission Valley Campus Master Plan, approved by the CSU Board of Trustees on January 29, 2020.

1.12 CDTFA. The California Department of Tax and Fee Administration, or any successor State of California entity or agency responsible for the administration of Sales Tax and Use Tax.

1.13 CEQA. Collectively, the California Environmental Quality Act, set forth at California Public Resources Code section 21000 *et seq.*, and the related CEQA Guidelines, set forth at California Code of Regulations, title 14, section 15000 *et seq.*

1.14 Certificate of Occupancy. A document issued by or on behalf of CSU in connection with any component of the Project, certifying that a completed building or structure complies with applicable Law and is in a condition suitable for occupancy.

1.15 City. The City of San Diego, a California municipal corporation, and any assignee of or successor to such municipal corporation’s rights, powers, or responsibilities.

1.16 City Climate Action Plan. The City’s Climate Action Plan, adopted by the City Council by Resolution R-2016-309 effective December 15, 2015, as amended by the City Council by Resolution R-2016-762 effective July 12, 2016.

1.17 City Council. The City Council of the City of San Diego.

1.18 City Parties. Collectively, the City and its officials, employees, agents, officers, attorneys, and representatives.

1.19 City Public Improvements. Street and utility improvements to be constructed by CSU on the CSU Property and the River Park Property that will be owned, maintained and operated by the City following the completion of construction.

1.20 Civic Enhancement Fee. The City's Civic Enhancement allocation, or alternatively, the Civic Enhancement in-lieu fee, imposed in connection with the issuance of each building permit for Non-Government Use industrial or commercial development with a total building permit valuation above a specified monetary threshold, to support public art or cultural uses, with such allocation or in-lieu fee imposed in accordance with Chapter 2, Article 6, Division 7 of the Municipal Code, specifically Municipal Code sections 26.0714 through 26.0721, as may be amended or superseded from time to time.

1.21 Claim. Any claim, loss, cost, damage, expense, liability, lien, legal proceeding, enforcement action, administrative action or proceeding, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, notice of violation, fine, or penalty of any kind (including reasonable expert fees and expenses and, if the Party is in Default regarding its obligations to provide indemnification by improperly failing to provide a defense for any indemnified Person after expiration of the notice and cure periods described in Section 13, then Legal Costs of each such indemnified Person), and all financial or performance obligations arising from any judgment, decree, order, or other written decision issued by any Government representative or entity.

1.22 Community Benefit Additional Contribution. The monetary amount equal to Five Million Dollars (\$5,000,000), minus the Community Benefit Traffic Improvements Total Cost. The Parties estimate that the Community Benefit Additional Contribution will be approximately Two Million Four Hundred Thirty-Four Thousand Dollars (\$2,434,000).

1.23 Community Benefit Traffic Improvements. Collectively, the following off-site traffic improvements related to CSU's construction of the Project identified in the Final EIR as "Community Benefit Improvements", which are over and above the mitigation measures required for the Project under CEQA: (i) Campus-to-Campus Bicycle Connection – install and construct new buffered bike lanes (with a short segment of standard bike lanes) on Rancho Mission Road from the Mission Valley site to Ward Road; and with the cycle track improvements on Ward Road to be provided as part of the Rancho Mission Road/Ward Road improvements described below, there will be continuous bicycle facilities between the College Area and Mission Valley campuses; (ii) Friars Road Corridor Improvements – implement adaptive signal equipment, new detection cameras, and supporting communications technology along Friars Road at the following six intersections: River Run Drive/Friars Road; Fenton Parkway/Friars Road; Northside Drive/Friars Road; Santo Road/Friars Road; Riverdale Street/Friars Road; and Mission Gorge Road/Friars Road; (iii) Ruffin Road/Aero Drive Intersection – upgrade detection camera systems and supporting communications technology at intersection to enhance traffic flow operations; (iv) Rio San Diego Drive – re-stripe Rio San Diego Drive (Qualcomm Way to Fenton Parkway) to remove two existing vehicle lanes and provide buffered bike lanes (the existing striping would be maintained at the Rio San Diego

Drive/River Run Drive intersection, such that the buffered bike lane would shift to use the parking lane where red curb striping presently exists); (v) Rancho Mission Road/Ward Road – modify Rancho Mission Road/Ward Road from Camino del Rio North to Friars Road to provide a two-lane collector roadway with a two-way left-turn lane and a one-way cycle track on each side of the road.

1.24 Community Benefit Traffic Improvements Total Cost. The monetary amount of CSU's actual total cost to design and construct the Community Benefit Traffic Improvements, subject to the City's verification based on documentation provided by CSU to the City to substantiate the total cost.

1.25 Cooperate. CSU's and the City's good faith efforts to reasonably communicate with each other and use reasonable efforts to take such steps as may be reasonably necessary to effectuate and implement the terms and conditions of this Declaration. For clarification, "Cooperate" shall not include any obligation to incur liability or to retain or to utilize any third party consultants (including experts, advisors, or outside counsel).

1.26 County. The County of San Diego, California.

1.27 County Tax Collector. The San Diego County Treasurer-Tax Collector, or any successor County of San Diego or City entity or agency responsible for the administration of applicable real property taxes, including the Possessory Interest Tax, with respect to real property in the City.

1.28 CSU. Defined in the preamble of this Declaration.

1.29 CSU Board of Trustees. The Board of Trustees of the California State University.

1.30 CSU Entities. Collectively, CSU and any of its auxiliary organizations that perform any function or provide any services relating to the operation of the CSU higher education system, including the San Diego State University campus.

1.31 CSU Estimated Additional Park Contribution. \$19,080,000, which the Parties agree is a reasonable estimate of the total cost of CSU's monetary contribution toward the design and construction of the Additional Park Improvements.

1.32 CSU Estimated River Park Contribution. \$30,000,000, which the Parties agree is a reasonable estimate of the total cost of CSU's monetary contribution toward the design and construction of the River Park Improvements.

1.33 CSU Property. That certain real property consisting of 135.12 acres, comprised of both the real property commonly known as the San Diego County Credit Union stadium site and the Murphy Canyon Creek Parcel, generally located at 9449 Friars Road in the City of San Diego, County of San Diego, State of California, as legally described in Exhibit A to this Declaration.

1.34 CSU Property Development Plans Within City Easements. Grading and construction plans depicting proposed grading and initial site development construction

activities, including installation of structures and landscaping, within any City utility easement for regional water or sewer pipes existing on the CSU Property.

1.35 CSU Total Public Facilities Contribution. \$49,080,000, which is the collective total of the CSU Estimated River Park Contribution and the CSU Estimated Additional Park Contribution.

1.36 CSU Parties. Collectively, CSU, the CSU Board of Trustees, and CSU's employees, agents, attorneys and representatives.

1.37 Declaration of Affordable Housing Restrictions. The Declaration of Covenants, Conditions, and Restrictions Regarding Affordable Housing Development on SDSU Mission Valley Property, recorded in the Official Records against the CSU Property in connection with the Purchase Agreement Closing and at substantially the same time as the recording of this Declaration in the Official Records.

1.38 Default. Defined in Section 13.

1.39 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the highest rate of interest that Law allows under the circumstances.

1.40 Delivery Date. The date that is seven (7) consecutive years from the Purchase Agreement Effective Date (as may be extended pursuant to the express provisions of this Declaration), by which construction of the River Park Improvements and the New Stadium will be completed and such improvements will be open to the public for use and enjoyment, and with respect to the River Park Improvements prior to the occupancy of any building on the CSU Property with the exception of the New Stadium, subject to Section 2.7(c).

1.41 Developer Entity. Any developer, licensee, contractor, subcontractor, or other Person, whether operating on a for-profit or nonprofit basis, who enters into a Development Contract with CSU or its designee, auxiliary or affiliate.

1.42 Development Contract. A contract, subcontract, lease, license, easement, or any similar arrangement entered into between CSU (or its designee/affiliate) and a Developer Entity, under which the Developer Entity agrees to develop, construct, or install any specified component(s) of the Project on the CSU Property.

1.43 Development Impact Fee. All components of the Mission Valley Development Impact Fee imposed by the City on Non-Government Use residential and non-residential development in accordance with Municipal Code section 142.0640, as specifically described in the Mission Valley Development Impact Fee Schedule of the Mission Valley PFFP.

1.44 Development Impact Fee Projected Amount. \$49,550,000, which the Parties agree is a reasonable estimate or approximation of the total amount of the Development Impact Fee that would be payable to the City in connection with the full buildout of the Non-Government Use of the Project, considering the arrangement set forth in Section 4.1 by which the Parties agree that CSU is anticipated to construct certain public improvements beneficial to the City's interest in lieu of payment of the Development Impact Fee.

1.45 Development Permit. Any permit or approval required or permitted to be issued by CSU in connection with the construction or occupancy of any component of the Project.

1.46 DSD. The City's Development Services Department.

1.47 EDU Exhibit. The document included as Exhibit E to this Declaration, which identifies the number of EDUs assigned to each land use category anticipated to be developed on the CSU Property as part of the Project (excluding the New Stadium), and further identifies the Total Planned EDUs.

1.48 EDU. A unit of measure, also known as an equivalent dwelling unit, that standardizes all categories of land uses anticipated to be developed on the CSU Property as part of the Project (excluding the New Stadium) to the level of public infrastructure demand created by one single-family dwelling unit, as shown in the EDU Exhibit.

1.49 Effective Date. Defined in the preamble of this Declaration.

1.50 Environmental Claim. Any Claim relating to or arising from any actual or alleged violation of any Environmental Law or any Hazardous Substance Discharge, as well as all damages or costs of any kind or of any nature whatsoever to the extent relating directly or indirectly to such a Claim.

1.51 Environmental Law. Every applicable law, statute, code, ordinance, requirement, order, proclamation, directive, rule, or regulation of any local, state, or federal governmental agency in effect on or enacted after the Effective Date of this Declaration, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under, or about the CSU Property, as now or may at any later time be in effect, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 U.S.C. section 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 U.S.C. section 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 U.S.C. section 1251 *et seq.*]; the Toxic Substances Control Act ("TSCA") [15 U.S.C. section 2601 *et seq.*]; the Hazardous Materials Transportation Act ("HMTA") [49 U.S.C. section 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C. section 6901 *et seq.*]; the Clean Air Act [42 U.S.C. section 7401 *et seq.*]; the Safe Drinking Water Act [42 U.S.C. section 300f *et seq.*]; the Solid Waste Disposal Act [42 U.S.C. section 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 U.S.C. section 101 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 U.S.C. section 11001 *et seq.*]; the Occupational Safety and Health Act [29 U.S.C. sections 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code section 25288 *et seq.*]; the California Hazardous Substances Account Act [California Health & Safety Code section 25300 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code section 24249.5 *et seq.*]; or the Porter-Cologne Water Quality Act [California Water Code section 13000 *et seq.*]; together with any regulations promulgated under the above-referenced statutes and laws.

1.52 Existing Stadium. The San Diego County Credit Union Stadium, formerly known as Qualcomm Stadium or Jack Murphy Stadium, located on a portion of the CSU Property.

1.53 Existing Stadium Events. Any publicly-accessible events, including collegiate football games, other sports events, civic events, conventions, exhibitions, concerts, and other outdoor events, held by or with the permission of CSU at the Existing Stadium.

1.54 Existing Stadium Demolition. The demolition and dismantling of the Existing Stadium and either the removal of all associated debris and waste from the CSU Property or the onsite conversion of all associated debris and waste into construction or fill material to be used in the construction of the Project.

1.55 Expert Cost Estimator. A general contractor or other qualified consultant who has at least five (5) years of experience in estimating construction costs for projects comparable to the Additional Park Improvements and River Park Improvements in the San Diego region.

1.56 Federal. Relating or pursuant to the authority of the federal government of the United States of America.

1.57 Final EIR. The San Diego State University Mission Valley Campus Master Plan Environmental Impact Report, certified by the CSU Board of Trustees with respect to the Project in compliance with CEQA on January 29, 2020.

1.58 Final EIR MMRP. The Mitigation Monitoring and Reporting Program included in the Final EIR.

1.59 Flood Map Revision. One or more conditional letter of map revision (CLOMR), a CLOMR-F (fill), or a letter of map revision (LOMR), or any or all of them, to be prepared by CSU and submitted to the Federal Emergency Management Agency (FEMA) for its proposed approval in connection with the Project following the City's execution of a "community acknowledgement form".

1.60 General Contract Terms and Conditions. The CSU General Contract Terms and Conditions prepared by the Office of the Chancellor, Capital Planning, Design and Construction, June 2019, as the same may be amended, modified or supplemented in the future.

1.61 Government. Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City, or otherwise), whether now or later in existence.

1.62 Government Use. Collectively, (i) all improvements and facilities constructed and operated on the CSU Property for Bona Fide Public Purposes, including but not limited to, the New Stadium, roads, parking, public infrastructure facilities, public safety facilities, parks, open space, recreational fields, active and passive recreational areas, and similar uses; (ii) all improvements and facilities constructed on the CSU Property for Bona Fide Public Purposes that are owned, operated by or operated subject to the oversight of CSU or a CSU Entity, to the extent such improvements and facilities support CSU's governmental mission of higher education, including, but not limited to, academic buildings, CSU Entity administrative

buildings, classrooms, scientific and research facilities, athletic facilities, faculty, student, staff and employee housing, campus-supporting commercial services (including book stores and retail food services), and similar uses.

1.63 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical wastes, toxic substance or related material, petroleum, petroleum product, or any material, substance, or waste, including any solid, liquid, gas, odor, or any form of energy from whatever source, that: (i) is or becomes regulated, defined, or classified as "hazardous," "toxic," "harmful," or similar terms under any Environmental Law; (ii) is subject to any Law regulating, relating to, or imposing obligations, liability, or standards of conduct concerning protection of human health and safety, plant life, animal life, natural resources, property, or the enjoyment of life or property free from presence in the environment; or (iii) is or becomes subject to any Law that requires special handling in its use, transportation, generation, collection, storage, treatment, or disposal.

1.64 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the CSU Property or during transportation of any Hazardous Substance to or from the CSU Property, or that arises at any time from any construction, installation, use, operation, or other activities conducted at, on, under, or from the CSU Property, whether or not caused by a Party.

1.65 Housing Impact Fee. The Housing Impact Fee, commonly known as the commercial linkage fee, imposed by the City upon the issuance of each building permit for certain types of non-residential development to help finance local affordable housing for low-income workers whose jobs were created by such non-residential development, with such fee imposed in accordance with Chapter 9, Article 8, Division 6 of the Municipal Code, as may be amended or superseded from time to time, and with the amount of the fee calculated by the City based on square footage and building type, and with fee revenues deposited into the City's dedicated Affordable Housing Fund administered by the San Diego Housing Commission.

1.66 Immediately Available Funds. A bank wire transfer or a certified bank check.

1.67 Injunction. Any injunction, stay, restraining order, or other order, ruling, judgment, or other order, ruling, judgment, or similar determination of a court that prohibits the performance of a Party's material obligation required by this Declaration.

1.68 Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable in any way to the Parties, the CSU Property, the River Park Property, or the Project, including relating to any development, construction, use, maintenance, taxation, operation, occupancy, or environmental conditions affecting the CSU Property, the River Park Property, or the Project, or otherwise relating to this Declaration or any Party's rights, obligations, or remedies under this Declaration, or constituting any Environmental Law, whether in force on the Effective Date of this Declaration or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, exemption.

1.69 LEED. The Leadership in Energy and Environmental Design green building certification program developed by the U.S. Green Building Council, a nonprofit entity.

1.70 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding or other matter for which such Person is entitled to reimbursement, including reasonable attorneys' fees and court costs.

1.71 Mayor. The City's Mayor or his or her designee or successor in function.

1.72 Mission Valley PFFP. The City's Mission Valley Public Facilities Financing Plan existing as of the Effective Date.

1.73 Municipal Code. The San Diego Municipal Code.

1.74 MSCP Plan. The Final Multiple Species Conservation Program Plan for the San Diego Region dated August 1998, as may be amended, supplemented, or superseded in the future, and all related implementing agreements, plans, and documents.

1.75 MTS. The San Diego Metropolitan Transit System.

1.76 Murphy Canyon Creek. The creek that flows generally in a north-to-south alignment through the Murphy Canyon Creek Parcel, onto the River Park Property and toward the San Diego River.

1.77 Murphy Canyon Creek Parcel. The real property generally located at the eastern boundary of the CSU Property and consisting of approximately 2.5 acres, as legally described in Exhibit B to this Declaration.

1.78 New Stadium. The new, quality multi-use outdoor stadium, with capacity for approximately 35,000 people, to be constructed on the CSU Property and used for the New Stadium Events and consisting of concession areas, restaurants, bars, clubs, retail stores, kiosks, media facilities, athletic training and medical facilities, locker rooms, offices, meeting rooms, banquet facilities, ticketing facilities, scoreboards, amenities, and other ancillary and support uses and facilities customarily made part of a stadium of the quality necessary to accommodate the categories of uses encompassed within the New Stadium Events.

1.79 New Stadium Events. Collegiate and professional sports and other sports and civic events, conventions, exhibitions, concerts, and other outdoor events, including San Diego State University Division I football or other men's and women's collegiate sports, National Collegiate Athletic Association Bowl Subdivision Division I bowl games and programs (or future bowl games and programs with a similar designation to Division I), professional, premier, or Major League Soccer (MLS) soccer, or the National Football League (NFL).

1.80 Non-Government Use. Facilities and improvements constructed on the CSU Property that are not Government Use facilities and improvements. Non-Government Use facilities and improvements may include improvements, facilities and businesses constructed or installed on the CSU Property and operated solely for purely private business uses that are not in furtherance of or in support of CSU's governmental mission of higher education. Examples of

Non-Government Use facilities and improvements may include the following: private business office uses for private commercial, medical, professional or technology purposes; hotels and other visitor serving uses; and residential dwelling units that are available for occupancy by members of the general public, and not restricted to occupancy by CSU Entity employees or students.

1.81 Offsite Portions of Murphy Canyon Creek. The portions of Murphy Canyon Creek that are not located within the Murphy Canyon Creek Parcel or Southern Murphy Canyon Creek.

1.82 Official Records. The official records of the Office of the San Diego County Recorder.

1.83 On-Site Grading Plans. Collectively, the grading plan depicting CSU's proposed development within any floodplain on the CSU Property and the River Park Property, the SWQMP for the CSU Property and the River Park Property and the SWPPP for the CSU Property and the River Park Property.

1.84 Onsite Portions of Murphy Canyon Creek. The portions of Murphy Canyon Creek located within the Murphy Canyon Creek Parcel, as well as Southern Murphy Canyon Creek.

1.85 Operative Period. The time period commencing on the Effective Date of this Declaration and continuing until the date that is forty-five (45) years after the Effective Date, except that affordable housing covenants shall endure for a period of fifty-five (55) years pursuant to the terms of the Declaration of Affordable Housing Restrictions.

1.86 Other Taxes and Assessments. In addition to any taxes and assessments specifically identified in this Declaration, any other applicable taxes or assessments imposed by any Government, including the City, on or after the Effective Date of this Declaration, including the City's Business Tax and the City's Rental Unit Business Tax.

1.87 Parties. Collectively, the City and CSU.

1.88 Party. Individually, the City or CSU, as applicable.

1.89 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.90 Possessory Interest Tax. Real property taxes assessed by the County Tax Collector with respect to a "taxable possessory interest" within the CSU Property, as such term is defined in California Code of Regulations Title 18, Section 20(b).

1.91 Potential Sports Partners. Collegiate or professional sports leagues, including football, soccer, e-sports, or other high level or premier sports leagues, clubs, or franchises.

1.92 Prevailing Wage Action. Any of the following: (a) any determination by the California Department of Industrial Relations or the Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the California Department of Industrial Relations or the Federal Government that prevailing wage rates higher than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with Prevailing Wage Law, including maintaining certified payroll records pursuant to California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including pursuant to California Labor Code section 1781 or applicable Federal Law.

1.93 Prevailing Wage Law. California Labor Code sections 1720 through 1781, as amended or supplemented from time to time, and all regulations promulgated or enforced by the California Department of Industrial Relations or any other State agency with respect to prevailing wages, and any Federal Law regarding prevailing wages.

1.94 Project. The project to be developed, constructed, and operated by CSU and the Developer Entities on or about the CSU Property in accordance with the Campus Master Plan and the Final EIR, and as depicted on the Project Site Plan.

1.95 Project Site Plan. The depiction of the main development components (but not all components) of the Project, which is included as Exhibit D to this Declaration.

1.96 Project Status Report. A written report to be delivered by CSU to the City twenty (20) Business Days after each June 30 and December 31, identifying with respect to such reporting period (i) the number of EDUs for which construction has been completed, (ii) a summary of Additional Development Fees imposed upon Developer Entities, (iii) a summary of Development Permits issued by CSU for Non-Government Use facilities and improvements and the Additional Development Fees collected by CSU in connection therewith, (iv) a summary of any public art provided in lieu of paying the Civic Enhancement Fee; and (v) a summary of Additional Development Fees that have been delivered to the City.

1.97 PUD. The City's Public Utilities Department.

1.98 Purchase Agreement. Defined in Recital D of this Declaration.

1.99 Purchase Agreement Closing. The closing of the transaction under the Purchase Agreement, by which CSU has acquired fee title ownership of the CSU Property from the City.

1.100 Purchase Agreement Effective Date. _____, 2020, which is the "Effective Date" as defined in the Purchase Agreement.

1.101 River Park. The revitalization and restoration of the River Park Property, as required by the Section 22.0908 Conditions, so as to integrate Mission Valley's urban setting with the natural environment in a manner that incorporates active and passive park/recreation uses; 8-to-10-foot-wide linear walking and biking trails; a river buffer of native vegetation; and measures to mitigate drainage impacts and ensure compliance with water quality standards.

1.102 River Park and Storm Water BMP Development Agreement. The Agreement Regarding Development of River Park Improvements and Storm Water Best Management Practice Structures, to be recorded in the Official Records against the CSU Property and the River Park Property upon the Purchase Agreement Closing.

1.103 River Park Future Total Estimated Costs. A future estimate of the total cost to design, permit, and construct the River Park Improvements (or to complete the construction of the River Park Improvements, if construction has been partially completed as of the time of the future estimate, but excluding any costs for remediating environmental conditions affecting the River Park Property unless directly caused by CSU or any Developer Entity), and to facilitate long-term management and maintenance of the completed River Park Improvements, including a reasonable contingency amount for all cost components, as determined by the Expert Cost Estimator in accordance with Section 4.2.

1.104 River Park Improvements. Active and passive park uses, 8- to 10- foot wide linear walking and biking trails, children's play areas, interpretive signage, a river buffer of native vegetation, measures to mitigate drainage impacts and ensure compliance with water quality standards, and other features installed within or constructed upon the River Park Property by CSU pursuant to the River Park and Storm Water BMP Development Agreement.

1.105 River Park Property. That certain real property owned by the City and to remain in the City's ownership upon the Purchase Agreement Closing situated contiguous to, and generally south of, the CSU Property and consisting of approximately 34.6 acres, as legally described in Exhibit C to this Declaration.

1.106 RTCIP Fee. The Regional Transportation Congestion Improvement Program fee typically imposed by the City upon the issuance of each building permit for the development of a new residential dwelling unit, subject to any applicable exemptions (including for Affordable Housing Units) to provide a funding source for public investment in the San Diego region's transportation system to offset the negative impact of new development on congestion and mobility, with such fee imposed in accordance with: (i) the City's Regional Transportation Congestion Improvement Program dated April 2017, adopted by the City Council pursuant to Resolution R-311061 effective April 26, 2017, as such program may be amended or superseded from time to time; and (ii) each annual resolution adopted by the City Council to update the per-unit fee amount, including a different fee amount for single-family units and multi-family units.

1.107 Sales and Use Tax Law. Any Law pertaining to the imposition and collection of Sales Tax and Use Tax, including the Bradley-Burns Uniform Sales and Use Tax Law, set forth in California Revenue and Taxation Code section 7200 *et seq.*, and related regulations.

1.108 Sales and Use Tax Rate. The tax rate for Sales Tax and Use Tax generally applicable to transactions in the City, which equals 7.75 percent as of the Effective Date of this Declaration and is subject to change from time to time.

1.109 Sales Tax. The sales tax (including state, local, and district components of such tax) imposed on a seller at the Sales and Use Tax Rate pursuant to the Sales and Use Tax Law,

which generally applies to all retail sales of goods and merchandise in the City, subject to certain statutory exemptions.

1.110 SANDAG. The San Diego Association of Governments.

1.111 Southern Murphy Canyon Creek. The portion of Murphy Canyon Creek located on the River Park Property.

1.112 Stadium Event Reimbursable Costs. All actual, reasonable costs incurred by the City in connection with providing the Stadium Event Services from time to time, based on the City's customary charges for the type of services or based on specific billing rates approved by the City Council, as may be modified from time to time.

1.113 Stadium Event Services. All services provided by the City relating to public safety, crowd control, traffic management services, and related coordination for any Stadium Events, including services provided by the City's Police Department, the City Fire-Rescue Department, the City's Special Events Department, and other City employees as appropriate, but excluding any services provided by CSU.

1.114 Stadium Events. Collectively, Existing Stadium Events and New Stadium Events.

1.115 State. The State of California.

1.116 SWPPP. A Storm Water Pollution Prevention Plan.

1.117 SWQMP. A Storm Water Quality Management Plan.

1.116 Third Person. Any Person that is not a Party or one of the City Parties or the CSU Parties.

1.118 TMD (Tourism Marketing District) Assessment. The assessment imposed by the City on certain lodging businesses within the City's jurisdiction in accordance with the San Diego Tourism Marketing District Plan, at the assessment rate of two percent (2%), pursuant to City Council Resolution R-310664 adopted effective August 3, 2016, as such plan or resolution may be amended, supplemented, or superseded in the future. For the avoidance of doubt, any student housing will not be considered a lodging business that is subject to the TMD Assessment.

1.119 Total Planned EDUs. 10,950 EDUs, which is the total number of EDUs that CSU plans to be constructed on the CSU Property at full buildout of the Project (excluding the New Stadium), as envisioned by the Campus Master Plan and the Final EIR, and as shown in the EDU Exhibit.

1.120 Traffic Mitigation Measure Contribution. Three Hundred Ninety Thousand Dollars (\$390,000), which is the City's good faith estimate, as of the Purchase Agreement Effective Date, of the total cost of the following traffic mitigation measures associated with the Final EIR and full build out of Project: (i) optimizing the traffic signal timing at intersections along the Friars Road corridor extending from River Run Drive to Stadium Way, also known as Street A within the CSU Property (refer to MM-TRA-2, MM-TRA-3, and MM-TRA-4 in the

Final EIR MMRP); (ii) optimizing the traffic signal timing at the Fairmount Avenue/Mission Gorge Road intersection (refer to MM-TRA-11 in the Final EIR MMRP); and (iii) optimizing the traffic signal timing at the Ruffin Road/Aero Drive intersection (refer to MM-TRA-13 in the Final EIR MMRP).

1.121. Transient Occupancy Tax. The City's Transient Occupancy Tax imposed with respect to the temporary use and occupancy of certain lodging establishments, as described in Chapter 3, Article 5 of the Municipal Code, as such tax may be amended, increased, or decreased from time to time. For the avoidance of doubt, any student housing shall not be considered a lodging business that is subject to the Transient Occupancy Tax.

1.122 TSW. The City's Transportation Storm Water Department.

1.123 Unavoidable Delay. A delay in either Party performing any material obligation under this Declaration arising from or on account of any cause beyond the Party's reasonable control, including acts of God, fire, earthquake, flood, casualty, war, acts of terrorism, riots, regional natural disasters, pandemic, current or future COVID-19 orders and/or mandates from federal, state or local governments, inability to obtain required materials or supplies, a labor dispute which results in a strike, work stoppage or other inability to obtain labor, environmental contamination, governmental delays (excluding delays directly caused by the Party asserting an Unavoidable Delay). Unavoidable Delay shall not, under any circumstances, include delay caused by or relating to the financial condition, insolvency, or inability to obtain financing on the part of the Party asserting that Unavoidable Delay exists.

1.124 Use Tax. The use tax (including state, local, and district components of such tax) imposed on a consumer/buyer at the Sales and Use Tax Rate pursuant to the Sales and Use Tax Law, which generally applies to the storage, use, or other consumption in the City of goods purchased from retailers in transactions not subject to the Sales Tax.

1.125 Vertical Construction. The construction of any vertical improvements, including building structures, on the CSU Property as part of the Project, excluding the New Stadium and the River Park and ancillary facilities directly related to the use and operation of the New Stadium and the River Park, such as vehicular parking spaces serving the New Stadium and restrooms serving the River Park.

1.126 Water and Sewer Capacity Fees. Collectively, the City's customary water and sewer connection fees, customary water and sewer capacity charges, and other customary water and sewer charges associated with any proposed construction activity that will require, or result in, any new, additional, or modified connection to, the City's water or sewer system, with the amount of such fees calculated in accordance with the City's fee schedules, standards, or regulations in effect at the time of the proposed construction activity and as prescribed by applicable Municipal Code provisions, including Municipal Code sections 64.0410 (sewer) and 67.0513 (water).

1.127 Wetland Mitigation Project. The wetland mitigation project, commonly known as the Stadium Wetland Mitigation Project, that has been created by the City, and is currently being monitored and maintained by the City (including regular activities such as perimeter control,

ranger patrols, trash removal, transient management, and invasive plant removal), in compliance with the Wetland Mitigation Project Agreements on the Wetland Mitigation Project Site.

1.128 Wetland Mitigation Project Agreements. The regulatory agreements and permits governing the Wetland Mitigation Project, together with any and all amendments, modifications, supplements, and/or extensions thereof, including: (i) the Section 404 Permit dated December 21, 2015, File No. SPL-2014-00416-DB, issued by the U.S. Army Corps of Engineers to the City pursuant to Section 404 of the Clean Water Act; (ii) the Streambed Alteration Agreement, Notification No. 1600-2014-0192-R5, signed by the City's Public Utilities Department on August 5, 2015, and by the California Department of Fish and Wildlife on September 2, 2015; (iii) the Section 401 Water Quality Certification dated November 14, 2014, Certification No. R9-2013-0124, issued by the California Regional Water Quality Control Board, San Diego Region, to the City pursuant to Section 401 of the Clean Water Act; (iv) any site development permits or other permits issued or to be issued by the City relating to the use of wetland mitigation credits from the Wetland Mitigation Project Site; and (v) the Stadium Wetland Mitigation Project (San Diego River) Mitigation Plan Final dated March 13, 2015 and prepared for the City of San Diego, Public Utilities Department.

1.129 Wetland Mitigation Project Site. The City-owned real property consisting of approximately 57 acres (including approximately 40.4 acres of waters of the United States), located generally south of the CSU Property and the River Park Property and within the San Diego River and its floodplain, on which the Wetland Mitigation Project is situated and is being carried out by the City in accordance with the Wetland Mitigation Project Agreements.

2. PROJECT DEVELOPMENT COVENANTS. CSU, for itself and its successors and assigns, covenants to the City, and for the benefit of the City, that CSU shall timely comply with all provisions of this Section 2 throughout the Operative Period.

2.1 Completion of Project. CSU shall cause the Project, consisting of a world-class university research and innovation campus, to be constructed, at no cost to the City (except as otherwise expressly set forth in the Purchase Agreement and its attachments), in accordance with applicable Law, and consistent with the Campus Master Plan, the Final EIR and the Final EIR MMRP. CSU shall cause all building components of the Project to be constructed in a manner that meets or exceeds the LEED-certified standard of Version 4 Silver effective as of the Effective Date of this Declaration. CSU shall cause the Project, once constructed and completed on the CSU Property, to include the development components required by the Section 22.0908 Conditions, the Additional Public Benefits, the Final EIR and the Final EIR MMRP, as identified on the Project Site Plan or described in the Campus Master Plan, or both.

2.2 Main Development Components. Without limiting any of CSU's obligations under Section 2.1, CSU shall cause the Project, upon completion, to include the following main development components on the CSU Property, at a minimum:

- (a) The New Stadium;
- (b) The Additional Park Areas and Active Recreation Space for use by all members of the public;

(c) Public trails, walking and biking paths or trails, and associated open space on the CSU Property;

(d) Passive recreation areas;

(e) Facilities for educational, research, entrepreneurial, and technology programs within a vibrant mixed-use campus village and research park that is constructed in phases and comprised of all of the following elements:

(1) Academic and administrative buildings and classrooms;

(2) Commercial, technology, and office space, compatible and synergistic with CSU's needs, to be developed through Development Contracts;

(3) Complementary retail uses serving neighborhood residents and businesses while also creating an exciting game-day experience for San Diego State University's football fans and other Potential Sports Partners;

(4) At least one (1) hotel to support visitors to campus and stadium-related events and provide additional meeting and conference facilities, which hotel will serve as an incubator for graduate and undergraduate students in San Diego State University's L. Robert Payne School of Hospitality and Tourism Management;

(5) Faculty and staff housing to assist in the recruitment of nationally recognized talent;

(6) Graduate and undergraduate student housing to assist with athlete and student recruitment;

(7) Apartment-style homes for the local community interested in residing in proximity to a vibrant university village atmosphere;

(8) Other market-rate, workforce, and affordable homes in proximity to a vibrant university village atmosphere; and

(9) Trolley and other public transportation uses and improvements to minimize vehicular traffic impacts in the vicinity of the CSU Property.

2.3 New Stadium Construction. CSU will cause the design and construction of the New Stadium to be completed, in a good and workmanlike manner and in accordance with applicable Law, no later than the Delivery Date (subject to extension as set forth below). CSU will cause the New Stadium to be constructed in a manner that meets or exceeds the LEED-certified standard of Version 4 Silver effective as of the Effective Date of this Declaration. The City will not incur any costs associated with the design, permitting, and construction of the New Stadium, but the City will Cooperate with CSU's efforts to construct the New Stadium as described in the Purchase Agreement.

(a) Extension of Delivery Date. Subject to written notice duly provided by CSU to the City pursuant to paragraph (b) below, the Delivery Date will be extended for up to a maximum of twenty-four (24) aggregate months (or thirty-six (36) aggregate months if due to an Injunction) due solely to a cause beyond CSU's commercially reasonable control that arises prior to the Delivery Date which includes, but is not limited to, one or more of the following: acts of God, fire, earthquake, flood, casualty, war, acts of terrorism, riots, regional natural disasters, pandemic, future COVID-19 orders and/or mandates from federal, state or local governments, inability to obtain required materials or supplies, a labor dispute which results in a strike, work stoppage or other inability to obtain labor, environmental contamination, governmental delays (excluding delays directly caused by CSU), or an Injunction preventing CSU's completion of New Stadium or other performance obligation required herein (provided that CSU has diligently and in good faith taken all reasonable steps to cause the dissolution or vacation of such Injunction). Notwithstanding the foregoing, there will be no extension of the Delivery Date under any circumstances due to the financial condition, insolvency, or inability to obtain financing on the part of CSU.

(b) Notice of Delay. Within ten (10) Business Days after first learning of any cause described in paragraph (a) above that will cause a delay of the construction of the New Stadium to completion by the Delivery Date, CSU will deliver written notice to the City describing in reasonable detail the nature of the delay, an explanation of the cause of the delay, the date of occurrence of the delay, a reasonable estimate of the length of delay, and all reasonably available supporting data. During the applicable period of extension described in paragraph (a) above, CSU will not be in Default for failing to meet the Delivery Date.

2.4 Potential Sports Partners for New Stadium. CSU represents that it has designed the New Stadium to allow CSU, after completing initial construction of the New Stadium, to make additions, modifications, or improvements to the New Stadium that will facilitate the growth of the San Diego State University campus and the inclusion of Potential Sports Partners related to the use and operation of the New Stadium as discussed in the Final EIR. In addition, CSU will Cooperate reasonably with any requests submitted by the City or any Third Person to consider any earnest proposal, substantiated by a written business plan, for any Third Person to be included as one of the Potential Sports Partners related to the use and operation of the New Stadium. CSU will not be required to incur any out-of-pocket expenses or scheduling delays with respect to its consideration or inclusion of any Potential Sports Partners. CSU will cause the New Stadium to be constructed in a manner that it can be adapted or expanded in the future for use by the National Football League pursuant to standards applicable as of the date of certification of the Final EIR by the CSU Board of Trustees.

2.5 Existing Stadium Demolition. CSU will, at no expense or cost to the City from and after the Effective Date, cause the Existing Stadium Demolition to be completed in accordance with applicable Law.

2.6 Environmentally-Friendly Features. Consistent with the Additional Public Benefits, CSU will cause certain environmentally-friendly features to be integrated into the design, construction, and operation of the Project, including the following features at a minimum:

(a) The Project shall include bio-retention basins that are designed to create and increase biological habitat and treat and direct storm water and urban runoff entering the natural environment. The upper slope of all bio-retention basins in the Project shall be planted with appropriate native shrubs and trees to encourage biological habitat. The lower area of all bio-retention basins shall be planted with plant materials that support the growth of biological habitat while maximizing and maintaining bio-filtration effectiveness. No invasive plants shall be permitted in any bio-retention basins in the Project.

(b) All vegetation materials included in bio-swales within the Project shall be selected, in consultation with the San Diego Management and Monitoring Program staff scientists to enhance bio-filtration effectiveness and natural habitat protection.

(c) To the maximum extent feasible, trails that extend through any bio-swale areas within the Project shall be elevated to avoid or minimize flooding and habitat impacts.

(d) The Project shall adhere to best practices for the installation of bird-safe windows, with an emphasis on the first two stories of all buildings directly facing the San Diego River and all buildings facing open corridors.

(e) The Project shall adhere to all design guidelines in the Campus Master Plan related to the architectural, park, and ecological design elements of the Project. CSU shall monitor and enforce compliance with those design guidelines.

(f) The Project, upon completion, shall include at least 80 acres of open space that is accessible to the public.

(g) Any lighting of recreation fields will follow current San Diego River guidelines, as described in the Final EIR MMRP.

(h) All construction activities in the Project that occur directly adjacent to the City's Multi-Habitat Planning Area (i.e., the San Diego River) must be performed in a manner consistent with the Final EIR MMRP which includes mitigation measures intended to minimize indirect effects to the City's Multi-Habitat Planning Area.

(i) To the degree feasible and acknowledging that existing Murphy Canyon Creek storm water and infrastructure cannot be moved, the Murphy Canyon Creek corridor will be enhanced to increase the ecological function of the creek buffer.

2.7 River Park Construction. CSU will cause the design and construction of the River Park on the River Park Property to be completed in a good and workmanlike manner and in accordance with the River Park and Storm Water BMP Development Agreement and in accordance with Law, no later than the Delivery Date (subject to extension for as set forth below). Without limiting the City's responsibility for Environmental Claims affecting the River Park Property except as provided in Section 2.7(c) below, the City will not incur any costs associated with the design, permitting, and construction of the River Park from and after the Effective Date, but the City will Cooperate with CSU's efforts to design, permit and construct the River Park as described in the Purchase Agreement.

(a) Extension of Delivery Date. Subject to written notice duly provided by CSU to the City pursuant to paragraph (b) below, the Delivery Date will be extended for up to a maximum of twenty-four (24) aggregate months (or thirty-six (36) aggregate months if due to an Injunction) due solely to a cause beyond CSU's commercially reasonable control that arises prior to the Delivery Date which includes, but is not limited to, one or more of the following: acts of God, fire, earthquake, flood, casualty, war, acts of terrorism, riots, regional natural disasters, pandemic, future COVID-19 orders and/or mandates from federal, state or local governments, inability to obtain required materials or supplies, a labor dispute which results in a strike, work stoppage or other inability to obtain labor, environmental contamination, governmental delays (excluding delays directly caused by CSU), or an Injunction preventing CSU's completion of the River Park Improvements or other performance obligation required herein (provided that CSU has diligently and in good faith taken all reasonable steps to cause the dissolution or vacation of such Injunction). Notwithstanding the foregoing, there will be no extension of the Delivery Date under any circumstances due to the financial condition, insolvency, or inability to obtain financing on the part of CSU. Except as provided in Section 2.7(c) below, in no event will an extension of the Delivery Date with respect to the River Park Improvements impair, modify, or waive CSU's obligation to complete construction of the River Park Improvements and open the River Park Property to the public for use and enjoyment prior to the occupancy of any building on the CSU Property with the exception of the New Stadium.

(b) Notice of Delay. Within ten (10) Business Days after first learning of any cause described in paragraph (a) above that will cause a delay of the construction of the River Park Improvements to completion by the Delivery Date, CSU will deliver written notice to the City describing in reasonable detail the nature of the delay, an explanation of the cause of the delay, the date of occurrence of the delay, a reasonable estimate of the length of delay, and all reasonably available supporting data. During the applicable period of extension described in paragraph (a) above, CSU will not be in Default for failing to meet the Delivery Date.

(c) Delay Due to Environmental Remediation of the River Park Property. The City, not CSU, will have all obligations, liabilities, and responsibilities relating to the investigation or remediation of Hazardous Substances on, under, or affecting the River Park Property and further remains liable for all obligations, liabilities, and responsibilities with respect to any Environmental Claims affecting the River Park Property, except to the extent environmental conditions giving rise to an Environmental Claim affecting the River Park Property are determined to have been directly caused by CSU or any Developer Entity. Prior to CSU's commencement of construction of the River Park Improvements, CSU will deliver to the City its schedule for construction of the River Park Improvements. Such construction is estimated to be completed within approximately two (2) years after the commencement of construction of the River Park Improvements. If construction of the River Park Improvements is delayed due to environmental studies and remediation relating to the River Park Property, then notwithstanding the failure to complete the River Park Improvements by the Delivery Date, CSU will be entitled to complete and occupy buildings in addition to the New Stadium at such time as the construction of the River Park Improvements would have been completed but for the delay associated with the environmental studies and remediation conducted by or on behalf of the City or a designated third party.

2.8 Murphy Canyon Creek. The Final EIR concludes that the Project will not have any significant environmental impacts to Murphy Canyon Creek. During construction of the Project, CSU will cause the implementation, and ongoing compliance with, all applicable mitigation measures in the Final EIR MMRP related to Murphy Canyon Creek. The City will Cooperate reasonably with CSU's plan to modify Rancho Mission Road across Murphy Canyon Creek as part of the Project in a manner that avoids or minimizes any impacts to Murphy Canyon Creek and complies with Law and the Final EIR.

2.9 Fair Contributions Toward Traffic Improvements. CSU will cause all of the following actions to be completed in connection with development of the Project:

(a) The Community Benefit Traffic Improvements will be completed in accordance with the Final EIR MMRP, applicable Law and the City's customary standards for the City Engineer's acceptance of public street improvements. CSU will solely bear the Community Benefit Traffic Improvements Total Cost, including any associated cost overruns. The City will Cooperate reasonably with CSU to provide physical access on City-owned right-of-way as may be necessary for CSU's completion of the Community Benefit Traffic Improvements, subject to CSU's compliance with the City's normal requirements for use of public right-of-way and with the physical access provided at no cost to either Party.

(b) Following completion of the Community Benefit Traffic Improvements, CSU will pay the Community Benefit Additional Contribution to the City. The City will promptly place the Community Benefit Additional Contribution into a capital improvement fund to be used by the City to fund capital improvement projects for improved traffic circulation in the Mission Valley, Serra Mesa, and Navajo communities, with a preference toward projects closest in vicinity to the CSU Property.

(c) CSU will also pay the Traffic Mitigation Measure Contribution to the City in accordance with the Final EIR MMRP. At the earliest practicable opportunity after receipt of CSU's payment, the City will use the Traffic Mitigation Measure Contribution to complete the specific traffic improvements for which CSU paid the Traffic Mitigation Measure Contribution. The City agrees that CSU's Traffic Mitigation Measure Contribution constitutes its fair share toward the significant impacts of the Project, in accordance with CEQA and the Final EIR.

2.10 Public Transit Improvements. CSU will cause the following actions to be completed:

(a) CSU will construct a trolley plaza in the vicinity of the existing light rail transit center on the CSU Property, activated with commercial uses and providing adequate space for at least four bus bays, as described in the Final EIR.

(b) CSU will design, construct, and operate the Project in a manner that facilitates the daily and efficient use of the Green Line light rail transit station on the CSU Property operated by MTS.

(c) CSU will Cooperate in good faith with the City, MTS, and SANDAG to accommodate the inclusion of a planned Purple Line light rail transit station on or about the CSU Property and will participate in any related meetings and planning efforts upon request from time

to time by the City, MTS, and SANDAG. Until the completion of those meetings and planning efforts, CSU will reserve adequate right-of-way within the CSU Property for the potential future construction, operation, and maintenance of a new Purple Line light rail transit station on the CSU Property in a precise location mutually desirable to CSU, the City, MTS, and SANDAG.

2.11 Reduction of Greenhouse Gas Emissions. CSU will cause the Project to be constructed in a manner that complies with the City Climate Action Plan's greenhouse gas emissions reduction goals. CSU will cause the implementation of, and ongoing compliance with, all mitigation measures related to the reduction of greenhouse gas emissions as described in Chapter 4.7 of the Final EIR and contained in the Final EIR MMRP.

2.12 Prevailing Wages. CSU will cause compliance with Prevailing Wage Law with respect to the construction of the New Stadium and all other public improvements in the Project, provided that the construction of such public improvements occurs on state-owned property or involves the use of state funding, as set forth in Section 22.0908 of the San Diego Municipal Code. To the extent allowed under State Law, (a) all building and construction work in the Project will be performed by contractors and subcontractors licensed by the State; and (b) CSU will cause all contractors and subcontractors performing building and construction work in the Project to use good faith efforts to ensure that their workforce construction hours are performed by residents of San Diego County, as set forth in Section 22.0908 of the San Diego Municipal Code. CSU acknowledges that the City is not the awarding body for construction of any component of the Project required or contemplated under this Declaration.

2.13 Timing of Vertical Construction. Consistent with the Additional Public Benefits, CSU will ensure that no Vertical Construction is completed on the CSU Property, or made available for use and occupancy, until after CSU has caused at least 42 acres of active park space and open space adjacent to, and north of, the San Diego River (including the River Park Improvements) to be completed and available for regular public use, access, and enjoyment as contemplated by the Campus Master Plan; provided, however, if construction of the River Park Improvements is delayed due to environmental studies and remediation relating to the River Park Property, then notwithstanding the failure to complete the River Park Improvements by the Delivery Date, CSU will be entitled to complete Vertical Construction and occupy buildings in addition to the New Stadium at such time as the construction of the River Park Improvements would have been completed but for the delay associated with the environmental studies and remediation conducted by or on behalf of the City or a designated third party.

2.14 Reasonable Diligence in Construction. CSU will use commercially reasonable efforts to cause the Project to be appropriately planned and completed in a manner that does not preclude the ultimate construction and operation on the CSU Property of any of the main development components identified in Section 2.2 or any of the environmentally-friendly features identified in Section 2.6. CSU will also use commercially reasonable efforts to cause the Project to be constructed and completed with reasonable diligence, recognizing that the Project will be developed in phases over many years and subject to market and other conditions beyond CSU's control.

2.15 Groundwater Management Rights. Subject to the terms of this Declaration and applicable Law, the City retains the right to enter upon and make use of the CSU Property for the

purpose of exercising the City's Pueblo water rights and any related activities, including installing, maintaining, and operating pump stations, wells, and any other necessary infrastructure or piping, provided that the City's exercise of its Pueblo water rights will not interfere with CSU's development, use, construction, operation or maintenance of the Project. CSU will Cooperate with the City's need to obtain any reasonable physical access or easement on the CSU Property relating to the City's exercise of its Pueblo water rights, provided that the City's exercise of its Pueblo water rights will not interfere with CSU's development, use, construction, operation, or maintenance of the Project.

2.16 Project Status Reports. Although not required by Law, CSU will prepare, and submit to the City, a Project Status Report semi-annually. CSU will not be required to provide Project Status Reports after full build-out of the Project.

3. PERMITTING FUNCTIONS.

3.1 Issuance of Development Permits. Subject to Section 3.3 and except as otherwise expressly provided in this Declaration, the Parties acknowledge that CSU, as a sovereign entity of the State of California, will have the permit-issuing authority for the Project and will be solely responsible for processing all applications for Development Permits, and issuing all Development Permits. CSU will exercise its permit-issuing authority for the Project in accordance with applicable Law and will require every permittee, including each permittee under any Development Permit, to comply with all applicable requirements of Law. For the avoidance of doubt, CSU will not be required to comply with any Law adopted or implemented by the City, except to the limited extent provided herein.

3.2 Issuance of Certificates of Occupancy. CSU will have the authority to issue a Certificate of Occupancy for each completed building or structure on the CSU Property.

3.3 City's Limited Review Rights.

(a) Flood Map Revisions. The Parties acknowledge that CSU intends to cause portions of the Project to be graded and removed from the 100-year floodplain during construction of the Project, subject to FEMA review and approval of the Flood Map Revision. The City, in its capacity as the floodplain administrator, will Cooperate with the effort to obtain FEMA's approval of the Flood Map Revision as may be needed to facilitate CSU's development of the Project, provided that the City will not be required to incur any associated material out-of-pocket expenses or liability whatsoever. The City's reasonable cooperation will include the City's signature of one or more "Community Acknowledgment Forms" in reliance on grading plans and related materials prepared by CSU or its consultants, in form and content reasonably acceptable to the City, and the City's reasonable coordination with CSU to submit all applications and materials to FEMA relating to the Flood Map Revision. CSU will prepare the proposed Community Acknowledgment Form and any other applications and materials associated with the Flood Map Revision in a manner that achieves full compliance with applicable Law and is in substantial conformance with the City's applicable regulations and requirements pertaining to grading activities in a floodplain. CSU will pay all fees and expenses associated with CSU's preparation, and FEMA's processing, of all applications and materials relating to the Flood Map Revision. The Parties will reasonably and promptly Cooperate with

each other to finalize the content of any submittals made to FEMA and any follow-up responses to FEMA as may be required.

(b) Grading Plans. CSU has provided the City its On-Site Grading Plans and the City has provided review comments on the On-Site Grading Plans. Before CSU issues a grading permit or commences any construction activity within any floodplain on the CSU Property or the River Park Property, CSU will submit to DSD and TSW for review, revised On-Site Grading Plans and CSU will respond to DSD and TSW comments and consult with DSD and TSW. This review and consultation is intended to confirm CSU's plans do not materially conflict with: (i) MS4 storm water requirements, understanding that CSU will issue its own grading permit complying with storm water requirements; and (ii) applicable City requirements, which include the Land Development Code (including Chapter 14, Article 2, Divisions 1 and 2, and Chapter 14, Article 3, Divisions 1 and 3) and the Land Development Manual (including Appendixes B – Drainage Design Manual, H – Standard Drawings, O – Storm Water Standards Manual, and S – FEMA Definitions). CSU will make a good faith effort to incorporate all comments received from DSD and TSW into the final On-Site Grading Plans. CSU will provide a written explanation to DSD and TSW if any of their comments are not incorporated, but further consultation will not be required before CSU may proceed with issuance of its grading permit or construction activities. CSU will ensure that all grading associated with the establishment and implementation of water quality best management practices achieves a hydraulic disconnection between the basin areas and the adjacent San Diego River 100-year floodplain. Without limiting the City's responsibility for Environmental Claims affecting the River Park Property except as provided in Section 2.7(c) above, CSU will bear all costs and expenses associated with the performance of any grading activities within any floodplain on the CSU Property and the River Park Property and all costs associated with obtaining the necessary Approvals for such grading activities.

(c) CSU Property Development Plans Within City Easements. CSU agrees that improvements constructed within City sewer and water line easements on the CSU Property and the River Park Property will be limited to landscaping, hardscaping, streetscaping, recreational fields, bike paths, trails and similar improvements. Prior to constructing or installing improvements (or permitting the construction or installation of improvements) within any City sewer or water line easement on the CSU Property or the River Park Property, CSU will provide to PUD and DSD, for review and approval, the CSU Property Development Plans Within City Easements depicting proposed grading and site development construction activities within the affected City easements. Before CSU issues a grading permit, construction permit, or any other permit allowing such grading or construction activities, or commences any such grading or construction activities on the CSU Property or the River Park Property within such a City easement, PUD will have first reviewed and approved the proposed CSU Property Development Plans Within City Easements, with PUD's approval being confirmed via a signed letter from PUD's Director, and DSD will have issued all applicable permits and approvals, as set forth in Section 3.4(a) and (b) below, and CSU will have obtained an encroachment maintenance and removal agreement from the City in a form mutually agreeable to the Parties. PUD's review and approval of the CSU Property Development Plans Within City Easements and any modifications to those plans will be limited to PUD confirming: (i) the CSU Property Development Plans Within City Easements are consistent with PUD-related City regulations in the Land Development Code and the Land Development Manual, specifically Appendix N – Water Design

Guide and Sewer Design Guide; and (ii) CSU's grading activities will not impair, damage, or interfere with PUD's groundwater management program or existing public utilities. CSU will not modify the approved CSU Property Development Plans Within City Easements, or undertake any grading or construction activities in conflict with such approved plans after PUD confirms its approval of such plans in writing. The City will have the right to reasonably inspect CSU's grading or construction activities occurring within City's easements for water and sewer lines to ensure conformance with the approved CSU Property Development Plans Within City Easements.

3.4 City's Limited Permitting Authority.

(a) Relocation of Sewer Lines. The City will Cooperate with CSU's efforts to relocate certain existing City sewer lines on the CSU Property and the River Park Property in order to minimize impacts to CSU's planned development footprint and traffic circulation for the Project. Sewer lines to be relocated include, but are not necessarily limited to, an 8" and 18" sewer line serving the Existing Stadium and the existing Serra Mesa Community and Fire Station located north of Friars Road and a portion of an existing 36" sewer line located in the easterly portion of the River Park Property to facilitate the construction of an extension of Rancho Mission Road. CSU will obtain all applicable Approvals required in connection with the relocation of City sewer lines. Without affecting any provisions relating to the City's review and approval rights over construction or grading within the City's sewer line easement areas as set forth Section 3.3(c), CSU will obtain either public improvement permits or right-of-way permits, as applicable, from the City in the City's reasonable discretion prior to: (i) relocating the existing City sewer lines on the CSU Property or the River Park Property; (ii) constructing or installing any new City sewer lines on the CSU Property or the River Park Property; and (iii) establishing a connection to any City sewer pipelines. CSU will bear all costs and expenses associated with: (a) any sewer line relocation and construction on the CSU Property, the River Park Property, and any adjacent property impacted by the Project; and (b) the provision and usage of sewer capacity, connections, and service resulting from the Project in excess of the sewer-related demands of the Project evaluated in the Final EIR, including any upgrades or system improvements needed as a result of an increase in such sewer-related demands. The fees charged for future sewer connections or increased capacity will be calculated taking into account the existing sewer capacity at the CSU Property as of the Effective Date. The 84/96-inch interceptor sewer on the River Park Property will remain in its current alignment and will not be relocated as part of the Project.

(b) Relocation of Water Lines. The City will Cooperate with CSU's efforts to relocate any existing City water lines or facilities on the CSU Property and the River Park Property to a new location that minimizes impacts to CSU's planned development footprint and traffic circulation for the Project. Water lines to be relocated include, but are not necessarily limited to, an existing 48-inch Alvarado water transmission main and the existing 16-inch water transmission main. In addition, the City will Cooperate with CSU's efforts to obtain new water meters and irrigation meters to serve the Project, in the capacity and quantity commensurate with the water demand to be created by the Project as evaluated in the Final EIR in connection with CSU's proposed relocation of any water lines. CSU will obtain all applicable Approvals required in connection with the relocation of City water lines. Without affecting any provisions relating to the City's review and approval rights over construction or grading within the City's

water line easement areas as set forth in Section 3.3(c), CSU will obtain either public improvement permits or right-of-way permits, as applicable, from the City in the City's reasonable discretion prior to: (i) relocating the existing City water lines on the CSU Property or the River Park Property; (ii) constructing or installing any new City water lines on the CSU Property or the River Park Property; and (iii) establishing a connection to any City water pipelines. CSU will bear all costs and expenses associated with: (a) any water line or facility relocation and construction on the CSU Property, the River Park Property, and any adjacent property impacted by the Project; (b) the installation of any new water meters and irrigation meters on the CSU Property, the River Park Property, and any adjacent property impacted by the Project; and (c) the provision and usage of water capacity, connections, and service benefitting the CSU Property and the River Park Property or resulting from the Project in excess of the water-related demands of the Project evaluated in the Final EIR, including any upgrades or system improvements needed as a result of an increase in such projected water-related demands. The fees charged for future water connections or increased capacity will be calculated taking into account the existing water capacity at the CSU Property as of the Effective Date. CSU will ensure that the Project is designed to include adequate water service for the River Park Property, both during Project construction and after Project completion. CSU will also ensure that the Project is designed to include adequate water service for the Wetland Mitigation Project Site, until such time as the City has received regulatory sign-off confirming the successful completion of conditions set forth in the Wetland Mitigation Project Agreements, which is currently anticipated to occur in March, 2023. Pending the City's review and approval of proposed public improvement plans submitted by CSU, it is presently anticipated by CSU that all onsite water mains will be owned and maintained by CSU, except that the existing 48-inch Alvarado water transmission main, the existing 16-inch water transmission main and the existing pressure-reducing station will continue to be owned and maintained by the City.

(c) Public Improvement Permits. CSU will be required to obtain public improvement permits or public right-of-way permits, as applicable, with respect to the proposed public utility improvements and street improvements to be constructed on the CSU Property and the River Park Property in connection with the Project that will be owned, operated, and maintained by the City following such construction. CSU will allow the City's employees or authorized representatives to access the CSU Property to inspect any work completed by or at the direction of CSU in accordance with the approved plans for City Public Improvements and any related permits. CSU will be solely responsible for the cost of construction and installation of all public utility improvements on the CSU Property and the River Park Property.

(d) Off Site Improvements. The City's issuance of an appropriate permit or approval (e.g., encroachment permit, etc.) will be required before any construction or work activity is commenced as part of the Project within any right of way owned by the City or any real property owned by the City, excluding the River Park Property.

3.5 Expedited Review and Cooperation. DSD will designate a project manager to help expedite the City's review and approval of all applicable plans and documents submitted by CSU, including by PUD, TSW and other City departments. If CSU pays the City's normal fees applicable for expedited processing, then once CSU's submittal is deemed complete, the City will expedite its review of CSU submittals and endeavor to finalize its review within fifteen (15) Business Days after the date of each complete initial submittal and (if applicable) each complete

subsequent submittal. If an application submitted to the City is deemed incomplete, the City will advise CSU of such incompleteness within fifteen (15) Business Days of the City's receipt of such application. However, the City will be unable to offer expedited review to the extent that CSU is proposing any material deviations from the City's standards and regulations.

4. DEVELOPMENT-RELATED FEES REQUIRED BY MEASURE G

4.1 CSU Total Public Facilities Contribution. The Parties agree that the CSU Total Public Facilities Contribution, if fully satisfied by CSU in accordance with this Declaration, will equal or exceed the Development Impact Fee Projected Amount. The Parties further agree that, if CSU satisfies the CSU Total Public Facilities Contribution in accordance with this Declaration, (i) the CSU Total Public Facilities Contribution will result in the completed construction and operation of certain public improvements beneficial to the City's interests and consistent with the types of public improvements for which the City normally would collect the Development Impact Fee for Non-Government Use development in accordance with the Mission Valley PFFP; (ii) CSU and any Developer Entity will not be required to pay, or cause the payment of, the Development Impact Fee in connection with the Project; and (iii) the CSU Total Public Facilities Contribution will constitute compliance with the City's development impact fee requirements as contemplated by Section 22.0908(l) of the San Diego Municipal Code. CSU will have the right, but not the obligation, to collect from Developer Entities any amount or fee similar to the Development Impact Fee (with the exception of any Additional Development Fees) from any Developer Entities to offset CSU's own cost of designing, permitting, and constructing any public improvements. In such event, CSU will not be required to remit to the City any Developer Entity's payment of or credit toward any such collected fee or amount.

4.2 River Park Improvements. CSU will complete the River Park Improvements in accordance with the River Park and Storm Water BMP Development Agreement prior to the Delivery Date, as the same may be extended pursuant to Section 2.7. Once the River Park Improvements have been completed and are available for regular public use and enjoyment, CSU will be deemed to have fully satisfied the portion of the CSU Total Public Facilities Contribution comprising the CSU Estimated River Park Contribution. CSU will not be entitled to receive any payment, reimbursement, credit, or waiver from the City to the extent that the actual costs incurred by CSU to construct the River Park Improvements exceed the CSU Estimated River Park Contribution.

(a) Assurance by Bond. Consistent with the Public Contract Code and the General Contract Terms and Conditions, CSU will cause the Developer Entities or contractor(s) performing work on the River Park Property to obtain payment and performance bonds prior to commencement of construction of the River Park Improvements, securing payment and performance of CSU's obligations to timely complete the River Park Improvements, and such payment and performance bonds will be maintained until the River Park Improvements are completed and made available for public use and enjoyment. The payment and performance bonds obtained by the Developer Entities or contractor(s) performing work on the River Park Property in satisfaction of this paragraph (a) will: (1) be in form and substance required by the General Contract Terms and Conditions and the Public Contracts Code; (2) be in sufficient amounts based on the final construction drawings or the designated engineer's construction estimate for the River Park Improvements, which amount will be updated based on periodic

updates provided for such cost estimates to the extent CSU may require updates under the General Contract Terms and Conditions and the Public Contract Code; and (3) be renewed at least thirty (30) calendar days prior to their expiration. CSU will provide the City with periodic updates of CSU's compliance with the provisions of this paragraph (a), and the City will have the right to seek reasonable information from CSU on CSU's compliance with the provisions of this paragraph (a), during construction of the River Park Improvements.

(b) Expert Cost Estimator. If CSU fails to require the Developer Entities or contractor(s) performing work on the River Park Property to maintain bonds as required by paragraph (a) above, and the River Park Improvements have not been completed and made available for regular public use and enjoyment by the Delivery Date (as the same may be extended pursuant to Section 2.7), then the Parties agree that, the City may elect, in its sole and absolute discretion, to pursue the following remedy: (i) the City and CSU will jointly retain an Expert Cost Estimator to provide an opinion as to the River Park Future Total Estimated Costs, and the City may (at its sole option) undertake a competitive bidding process for the River Park Improvements to provide the Expert Cost Estimator with relevant market data; (ii) the City will deliver written notice to CSU identifying the exact amount of the River Park Future Total Estimated Costs and the Expert Cost Estimator's related expenses; and (iii) within thirty (30) days after CSU's receipt of the City's written notice, CSU will fully pay to the City, in Immediately Available Funds, the River Park Future Total Estimated Costs and the Expert Cost Estimator's related expenses. If the City receives CSU's payment of the River Park Future Total Estimated Costs, the City will use such paid funds for construction and long-term maintenance of the River Park Improvements and CSU will be deemed to have completed the River Park ("**Expert Cost Estimator Remedy**"). If the City pursues the Expert Cost Estimator Remedy, that will be the sole and exclusive remedy available to the City in the event of a Default with respect to CSU's failure to complete the River Park Improvements by the Delivery Date (as the same may be extended).

4.3 Additional Park Improvements. CSU will complete the Additional Park Improvements prior to completion of the 4,600th residential dwelling unit within the Project. Once the Additional Park Improvements have been completed and are available for regular public use and enjoyment, CSU will be deemed to have fully satisfied the portion of the CSU Total Public Facilities Contribution comprising the CSU Estimated Additional Park Contribution. CSU will not be entitled to receive any payment, reimbursement, credit, or waiver from the City to the extent that the actual costs incurred by CSU to construct the Additional Park Improvements exceed the CSU Estimated Additional Park Contribution.

(a) Assurance by Bond. Consistent with the Public Contract Code and the General Contract Terms and Conditions, CSU will cause the Developer Entities or contractor(s) performing work for the Additional Park Improvements to obtain payment and performance bonds prior to commencement of construction of the Additional Park Improvements, securing payment and performance of CSU's obligations to timely complete the Additional Park Improvements, and such payment and performance bonds will be maintained until the Additional Park Improvements are completed and made available for public use and enjoyment. The payment and performance bonds obtained by the Developer Entities or contractor(s) performing the Additional Park Improvements in satisfaction of this paragraph (a) will: (1) be in form and substance required by the General Contract Terms and Conditions and the Public Contracts

Code; (2) be in sufficient amounts based on the final construction drawings or the designated engineer's construction estimate for the Additional Park Improvements, which amount will be updated based on periodic updates provided for such cost estimates to the extent CSU may require updates under the General Contract Terms and Conditions and the Public Contract Code; and (3) be renewed at least thirty (30) calendar days prior to their expiration. CSU will provide the City with periodic updates of CSU's compliance with the provisions of this paragraph (a), and the City will have the right to seek reasonable information from CSU on CSU's compliance with the provisions of this paragraph (a), during construction of the Additional Park Improvements.

(b) Expert Cost Estimator. If CSU fails to require the Developer Entities or contractor(s) performing the Additional Park Improvements to maintain bonds as required by paragraph (a) above, and the Additional Park Improvements have not been completed and made available for regular public use and enjoyment prior to completion of the 4,600th residential dwelling unit for the Project, then the Parties agree that, the City may elect, in its sole and absolute discretion, to pursue the following remedy: (i) the City and CSU will jointly retain an Expert Cost Estimator to provide an opinion as to the Additional Park Future Total Estimated Costs, and the City may (at its sole option) undertake a competitive bidding process for the Additional Park Improvements to provide the Expert Cost Estimator with relevant market data; (ii) the City will deliver written notice to CSU identifying the exact amount of the Additional Park Future Total Estimated Costs and the Expert Cost Estimator's related expenses; and (iii) within thirty (30) days after CSU's receipt of the City's written notice, CSU will fully pay to the City, in Immediately Available Funds, the Additional Park Future Total Estimated Costs and the Expert Cost Estimator's related expenses. If the City receives CSU's payment of the Additional Park Future Total Estimated Costs, the City will use such paid funds for construction and long-term maintenance of park and recreation facilities in the Mission Valley Community Plan Area and CSU will be deemed to have completed the Additional Park Improvements ("**Expert Cost Estimator Remedy**"). If the City pursues the Expert Cost Estimator Remedy, that will be the sole and exclusive remedy available to the City in the event of a Default with respect to CSU's failure to complete the Additional Park Improvements prior to completion of the 4,600th residential dwelling unit for the Project.

4.4 No Affordable Housing Fee. As described in the Declaration of Affordable Housing Restrictions, CSU has elected to cause the construction and operation of Affordable Housing Units on the CSU Property in a quantity that will equal or exceed ten percent (10%) of the total number of residential dwelling units constructed on the CSU Property. To the extent CSU constructs or causes Affordable Housing Units to actually be constructed and made available for occupancy or sale on the CSU Property in accordance with the Declaration of Affordable Housing Restrictions, the City agrees that neither CSU nor any Developer Entity will be required to pay the Affordable Housing in-lieu fee described in San Diego Municipal Code section 142.1304 in connection with the Project. The Declaration of Affordable Housing Restrictions sets forth the remedy available to the City if CSU fails to timely construct Affordable Housing Units.

4.5 Additional Development Fees. Before CSU issues any Development Permit relating to proposed construction activity for a Non-Government Use, CSU will cause the Developer Entity, as a condition to issuance of such Development Permit, to pay Additional

Development Fees (if any) associated with the proposed construction activity. In lieu of requiring payment of the Civic Enhancement Fee, CSU may permit Developer Entities to provide artwork within the CSU Property or to make a portion of the CSU Property open and accessible for cultural use in a manner substantially consistent with the substantive (but not procedural) requirements of San Diego Municipal Code section 26.0714(b)(1) or (b)(2). It is acknowledged that Government Use facilities and improvements and Affordable Housing Units are exempt from the requirement to pay Additional Development Fees. Other uses and applicants, as specified by in the San Diego Municipal Code and other City policies, ordinances, and resolutions may also be exempt from the payment of Additional Development Fees. CSU will remit Additional Development Fees collected from Developer Entities to the City on a semi-annual basis concurrent with its delivery of a Project Status Report, along with reasonable documentation demonstrating how Additional Development Fee amounts were calculated. CSU agrees to retain records relating to the calculation, imposition and collection of Additional Development Fees for a minimum of three (3) years and to provide additional information regarding the same upon the reasonable request of the City. Specific to this Project, CSU believes it is exempt from the requirement to pay the RTCIP Fee that the City typically collects on behalf of the San Diego Association of Governments because CSU, as a sovereign state entity, is not subject to such third-party local fees.

4.6 Water and Sewer Capacity Fees. Prior to any meter installation relating to any construction activity that will result in any new meters, additional capacity, or increased connection to the City's water or sewer system, CSU will cause the applicable CSU Entity or Developer Entity to pay to the City in full all Water and Sewer Capacity Fees associated with such proposed construction activity. The applicable Water and Sewer Capacity Fees will be calculated taking into account the existing water and sewer capacity at the CSU Property on the Effective Date of this Declaration. Without first obtaining the City's written confirmation that the City has received in full all such Water and Sewer Capacity Fees, there will be no authority to install any meter for any such construction activity. The City will provide a receipt or other written confirmation of the payment of Water and Sewer Capacity Fees promptly upon receipt of such payment by a CSU Entity or Developer Entity.

5. MISCELLANEOUS ADDITIONAL COVENANTS. CSU, for itself and its successors and assigns, covenants to the City, and for the benefit of the City, that CSU will timely comply with all provisions of this Section 5 throughout the Operative Period.

5.1 ADA Settlement Agreement.

(a) Compliance. CSU acknowledges that it is aware of and has received a copy of the ADA Settlement Agreement, CSU agrees to comply with all terms and conditions of the ADA Settlement Agreement, and subject to the City's express representations and warranties set forth in subsection (c) below, the City will have no further obligations under the ADA Settlement Agreement. In connection with its operations of the Existing Stadium, CSU will comply with all state and federal Law for the sale of wheelchair spaces and the adjacent companion seat and semi-ambulatory and armless aisle transfer seats, and any other specific requirements of the Law. The City will deliver to CSU copies of any notice, written demand, written request or other correspondence received from Plaintiff's Representative or anyone else

concerning the ADA Settlement Agreement within five (5) Business Days of the City's receipt of the same.

(b) Limited Effect. The terms of this Section 5.1 will be binding solely upon the fee owner of the portion of the CSU Property (as it may later be subdivided) upon which the Existing Stadium is located.

(c) Representations and Warranties. The City hereby represents and warrants as set forth below with respect to the ADA Settlement Agreement. As used herein, the phrase "City's Knowledge" means the actual knowledge of Cybele Thompson (Director of the Real Estate Assets Department), the person most knowledgeable about the Existing Stadium and the ADA Settlement Agreement as of the Effective Date, without duty of investigation or inquiry.

(1) The City has provided CSU with a true and complete copy of the ADA Settlement Agreement, which has not been amended, modified, or supplemented in any way.

(2) All improvements, including capital improvements, required to be performed pursuant to the ADA Settlement Agreement or any subsequent compliance inspections or other obligations required to have been performed under the ADA Settlement Agreement have been performed.

(3) To the City's Knowledge, there are no defaults under the ADA Settlement Agreement, and no event has occurred and no condition exists, which with the giving of notice or the passage of time, or both, will constitute a default under the ADA Settlement Agreement.

(4) There are no amounts owed to plaintiffs, their counsel or anyone else pursuant to the Settlement Agreement.

(5) To the City's Knowledge, the City has provided CSU with true and correct copies of reports or other documentation prepared in connection with any compliance inspections performed under the ADA Settlement Agreement, along with records of any actions taken and acceptance of the same by Plaintiff's Representative within the last three (3) years.

5.2 Payment of Stadium Event Reimbursable Costs. With respect to any planned Stadium Event that will require the City to provide Stadium Event Services, CSU will submit to the City reasonable advance written notice and a special event permit application or any other necessary documentation reasonably and customarily requested by the City. Upon CSU's proper request, the City will provide Stadium Event Services with respect to Stadium Events, as long as the following requirements are met: (i) CSU has provided sufficient advance notice to the City, and the City has granted any necessary Approvals which will not be unreasonably withheld, conditioned or delayed;; (ii) the City has adequate City staff and resources available to honor the request; and (iii) providing Stadium Event Services will not interfere with the City's ability to provide public safety generally. Within a reasonable time period after each Stadium Event is concluded, the City will submit to CSU a written invoice substantiating the reasonable amount of the Stadium Event Reimbursable Costs relating to such Stadium Event. After receiving each applicable invoice, CSU will pay to the City the Stadium Event Reimbursable Costs shown on

the written invoice within thirty (30) days after CSU's receipt of the invoice. The terms of this Section will be binding solely upon the fee owner of the portion of the CSU Property (as it may later be subdivided) upon which the Existing Stadium is located until the Existing Stadium is demolished, at which time it shall be binding solely upon the fee owner of the portion of the CSU Property upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses.

5.3 Plans to Ensure Public Safety. The Parties will reasonably collaborate in formulating, updating (as may be reasonably necessary from time to time), and implementing a written plan for traffic management and crowd control during all Stadium Events for which CSU requests the City to provide Stadium Event Services. The terms of this Section will be binding solely upon the fee owner of the portion of the CSU Property (as it may later be subdivided) upon which the Existing Stadium is located until the Existing Stadium is demolished, at which time it shall be binding solely upon the fee owner of the portion of the CSU Property upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses.

5.4 Worker Protections. When the New Stadium is constructed and ready to be opened for public use, CSU shall use good faith efforts to retain qualified employees then working at the Existing Stadium and enable them to continue working at the New Stadium, to the extent allowed under applicable Federal and State Law, including under agreements entered into by CSU pursuant to the Higher Education Employer-Employee Relations Act, Cal. Government Code section 3560 *et seq.*, and subject to CSU's employment policies and procedures. The terms of this Section will be binding solely upon the fee owner of the portion of the CSU Property (as it may later be subdivided) upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses.

5.5 Murphy Canyon Creek.

(a) Obligations Regarding Murphy Canyon Creek. CSU will cause the implementation of, and ongoing compliance with, all mitigation measures in the Final EIR MMRP, related to Murphy Canyon Creek. Commencing on the Effective Date, CSU will be responsible for maintenance of the Onsite Portions of Murphy Canyon Creek, but not for any improvements or conditions on or arising from the Offsite Portions of Murphy Canyon Creek. Provided the representations and warranties of the City set forth in Section 5.5(b) below are true and correct, the City will not be responsible for any improvements, alterations, or modifications to the Onsite Portions of Murphy Canyon Creek. The City will Cooperate with CSU as reasonably required to perform CSU's obligations with respect to Southern Murphy Canyon Creek, including executing applications for Approvals to the extent the landowner is required to be a party to the same. The terms of this Section will be binding solely upon the fee owner of the portion of the CSU Property upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses.

(b) Representations and Warranties. The City represents and warrants as set forth below with respect to the Murphy Canyon Creek Parcel and Southern Murphy Canyon Creek. As used herein, the phrase "City's Knowledge" means the actual knowledge of Andrew Kleis, in his capacity as the Deputy Director of the City's Department of Transportation and Storm Water Department, and Cybele Thompson, in her capacity as the City's Director of the Real Estate Assets Department, each without duty of investigation or inquiry. The City represents and warrants that Andrew Kleis and Cybele Thompson are the most knowledgeable City representatives regarding the Murphy Canyon Creek Parcel, Southern Murphy Canyon Creek and the matters described below.

(1) To the City's Knowledge, the City is not in violation of any permits, applicable laws, regulations, directives, notices, or orders issued by a court or a governmental or regulatory agency having authority over the Murphy Canyon Creek Parcel or Southern Murphy Canyon Creek.

(2) The City has not received written notice of any directives, notices, or orders issued by a court of competent jurisdiction or a governmental or regulatory agency having authority over the Murphy Canyon Creek Parcel or Southern Murphy Canyon Creek that require the City to take any action, including to make physical improvements to the Murphy Canyon Creek Parcel or Southern Murphy Canyon Creek or require the City to restore or repair any portion of the Murphy Canyon Creek Parcel or Southern Murphy Canyon Creek pursuant to which such required improvements or restoration or repair work have not been completed by the Effective Date in accordance with such directive, notice, or order.

5.6 Insurance. With respect to construction occurring on the River Park Property during initial build out of the Project, CSU will cause the contractor(s) performing work on the River Park Property to name the City as an additional insured on the policy of liability insurance it will be required by CSU to carry with respect to such work. Following completion of River Park construction activities, CSU will cause the City to be named as an additional insured on a policy of liability insurance it may carry with respect to the River Park Property.

5.7 Liens and Encumbrances. The Parties agree that this Declaration shall be recorded upon the Purchase Agreement Closing in senior priority position against the CSU Property relative to any Development Contracts or any related financing obtained by any Developer Entity. CSU will not permit any instrument to be recorded against the CSU Property that would cause CSU to be in violation of any specific provisions of this Declaration.

5.8 City's Limited Use of CSU Property. Until the County has completed an operational facility for Emergency Vehicle Operations Course training, but in any event not beyond December 31, 2020, CSU will permit the City's temporary use of the parking lot areas on the CSU Property for Emergency Vehicle Operations Course training in a manner similar to the occurrence of such training on the CSU Property before the Purchase Agreement Effective Date, provided that there are no conflicts or unreasonable interference with CSU's demolition, grading or other construction activities on the CSU Property or with any planned Stadium Events, the City obtains appropriate insurance coverage (naming the CSU Entities as additional insureds) and the City remains responsible in each instance for restoring the CSU Property to substantially the same condition that existed immediately before commencement of such training. Upon

request, CSU will reasonably consider a request to use the CSU Property for Emergency Vehicle Operations Course training beyond December 31, 2020, which request may be denied if CSU determines in its sole and absolute discretion that Emergency Vehicle Operations Court training would interfere with construction of the Project on CSU's desired timeframe.

6. COVENANTS RELATING TO WETLAND MITIGATION PROJECT. The Final EIR analysis concludes that the Project will not have significant, unmitigated impacts on wetlands, including the Wetland Mitigation Project Site. CSU will cause the Project to be constructed, operated, and maintained at all times, and will undertake the performance of all obligations under this Declaration at all times, in a manner that: (i) is consistent with the Final EIR MMRP; (ii) does not cause any damages, losses, or adverse impacts to the Wetland Mitigation Project or the Wetland Mitigation Project Site; and (iii) does not prevent or interfere with the City's ability to complete the Wetland Mitigation Project, including the City's monitoring and maintenance of sensitive habitat, in accordance with Law, the Wetland Mitigation Project Agreements, and the MSCP Plan. CSU will use commercially reasonable efforts to include appropriate language and notification in each Development Contract with each Developer Entity performing work on any aspect of the Project which could reasonably be anticipated to have any impacts on the Wetland Mitigation Project Site, and will provide reasonable oversight with respect to the work performed by each Developer Entity, to ensure that all requirements of this Section 6 are met.

7. FUTURE PLAN REVISIONS. During the Operative Period, CSU will not revise the Campus Master Plan in a manner that would cause CSU to be in violation of any specific provisions of this Declaration.

8. PAYMENT OF SPECIFIED TYPES OF TAXES.

8.1 No Property Tax for CSU Entities. The CSU Entities are exempt from and will not be subject to any real property taxes, including the Possessory Interest Tax, with respect to the CSU Property.

8.2 Possessory Interest Tax. The Parties acknowledge and agree that the County Tax Collector determines to what extent Possessory Interest Tax will apply, and will be payable with respect to, any Non-Government Use facilities and improvements within the Project.

8.3 Sales Tax and Use Tax. CSU will incorporate provisions into Development Contracts requiring the Developer Entity to obtain a permit or sub-permit for the job site from the CDTFA and allocate all eligible local Sales Tax and Use Tax to the City relative to the purchase, acquisition, installation, or furnishing of "materials, fixtures, or machinery and equipment" as defined in CDTFA Regulation 1521 in connection with the Project. CSU will incorporate provisions in applicable contracts requiring that CSU Entities, Developer Entities, vendors, and other Persons conducting retail sales of goods and merchandise at a point of sale within the City in connection with the Project, or involved in the storage, use, or other consumption in the City of goods purchased from retailers in transactions not subject to the Sales Tax in connection with the Project, to comply in all material respects with the Sales and Use Tax Law. Until the Existing Stadium is discontinued for public use, CSU also will incorporate provisions in appropriate contracts requiring that contractors, subcontractors, licensees, vendors,

and other Persons making retail sales of goods and merchandise at a point of sale on or about the Existing Stadium comply with the Sales and Use Tax Law in connection with such sales. CSU may comply with the terms of this Section 8.3 by incorporating provisions into Development Contracts requiring Developer Entities to comply with all applicable Law.

8.4 Transient Occupancy Tax. The Transient Occupancy Tax will apply to, and will be payable with respect to, any use within the Project that meets the definition of a Hotel, Campground, or Recreational Vehicle Park, as such terms are defined in Municipal Code section 35.0102 and any other Municipal Code provisions governing the Transient Occupancy Tax.

8.5 TMD Assessment. The TMD Assessment will apply to, and will be payable with respect to, any lodging business within the Project, subject to any applicable exemption. The Parties agree that student housing will not be considered a "lodging business" subject to the TMD Assessment.

8.6 Other Taxes and Assessments. Subject to applicable Law, the Other Taxes and Assessments will apply to the Project and any owners, occupants, users, and vendors residing within the Project or operating any business within the Project, subject to any applicable exemptions. This Section 8.6 is intended to be a restatement of existing law and not an agreement to pay Other Taxes and Assessments that otherwise would not be imposed on the CSU Property or the Project.

9. **TERMINATION.** This Declaration shall automatically terminate upon expiration of the Operative Period without written confirmation or consent required from either Party. Although not necessary to affect termination of this Declaration, upon the request of either Party after expiration of the Operative Period, the Parties will Cooperate to promptly record a formal release or termination of this Declaration in the Official Records of San Diego County.

10. **POTENTIAL CONFLICTS BETWEEN DOCUMENTS.** The Parties acknowledge that this Declaration will be recorded in the Official Records at substantially the same time as other documents between the Parties in connection with the Purchase Agreement Closing. If any direct conflict exists between this Declaration and any other document signed by the Parties and recorded in the Official Records in connection with the Purchase Agreement Closing, then this Declaration shall be controlling to the extent that this Declaration describes the permitting, development fees, construction, operation, or maintenance of the Project (other than any affordable housing components) on the CSU Property. If any direct conflict exists between this Declaration and the Declaration of Affordable Housing Restrictions, then the Declaration of Affordable Housing Restrictions shall be controlling with respect to any affordable housing components of the Project. However, varying degrees of stringency shall not be deemed direct conflicts, and the most stringent requirement shall control.

11. **ADEQUATE CONSIDERATION.** The Parties agree that: (a) the City's performance of its obligations under this Declaration and the Purchase Agreement represents fair and adequate consideration to CSU for granting this Declaration to the City and performing CSU's covenants and other obligations under this Declaration and the Purchase Agreement and (b) CSU granting this Declaration to the City and CSU's performance of CSU's covenants and other obligations under this Declaration and the Purchase Agreement represent fair and adequate

consideration to the City for performance of the City's other obligations under this Declaration and the Purchase Agreement.

12. COVENANTS RUN WITH THE LAND. Except as provided herein, all covenants, conditions, restrictions, reservations, and agreements set forth in this Declaration shall be deemed covenants running with the land of the CSU Property and enforceable by the City or CSU for the duration of the Operative Period. In accordance with Section 28 below, upon subdivision of the CSU Property, this Declaration will be terminated and released with respect to certain to-be created parcels within the CSU Property, at which time this Declaration shall no longer constitute a covenant running with the land as to such released parcels even if the Operative Period has not expired.

13. DEFAULTS. A Party will be in "default" under this Declaration in any of the following circumstances (each a "**Default**"):

(a) Monetary/Escrow Default. A Party fails to timely pay or deposit any amount of money, bond, surety, or evidence of any insurance coverage required under this Declaration, and this circumstance continues for five (5) Business Days after the Party in breach of its contractual obligation receives written notice from the other Party identifying the nature of the breach.

(b) Non-Monetary Default. Subject to any time extensions that may apply due to Unavoidable Delay, a Party fails to comply with any covenant or perform any obligation required hereunder and such failure is not cured within thirty (30) days after the delivery of written notice describing such failure by the other Party, provided that if such Default cannot reasonably be cured within such thirty (30) day period and the defaulting Party commences to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, the defaulting Party will be afforded an additional sixty (60) days to cure a Default.

14. REMEDIES. Subject to the express notice and opportunity to cure provisions of this Declaration regarding a specific Default, upon the occurrence of any Default by a Party under this Declaration, the non-defaulting Party may seek a court order that provides declaratory or injunctive relief to address the Default or pursue any other available legal or equitable remedy, unless the City has pursued an Expert Cost Estimator Remedy. If the City pursues the Expert Cost Estimator Remedy for either the River Park Improvements or Additional Park Improvements, that will be the City's sole and exclusive remedy for a Default with respect to completion of the River Park Improvements or the Additional Park Improvements, as applicable. Notwithstanding anything to the contrary set forth herein, neither Party will be entitled under any circumstances to recover any speculative, consequential or punitive damages from the other Party.

15. NO LIMITATION ON AUTHORITY. Nothing in this Declaration shall be deemed to limit, modify, or abridge or affect in any manner whatsoever, the governmental police power or other legal authority (whether direct or delegated) of the City or CSU under applicable Law regarding the CSU Property or the Project.

16. INDEMNITY OBLIGATIONS.

16.1 Indemnification and Hold Harmless Agreement by CSU. CSU shall defend, indemnify, and hold harmless the City Parties from and against any and all Claims related to this Declaration, the CSU Property, the River Park Property, or the Project arising from or relating to any of the following circumstances: (a) willful misconduct, sole negligence or active negligence of any CSU Party or CSU Entity on the CSU Property or the River Park Property or in connection with the Project; (b) any Default by CSU under this Declaration; (c) any noncompliance with applicable Law, including the Final EIR MMRP, related to use of the CSU Property by any CSU Party or CSU Entity; (d) contracts or agreements entered into by any CSU Entity with third parties in connection with this Declaration or the use of the CSU Property by any CSU Party or CSU Entity; (e) Claims relating to workers' compensation or to any employee of any CSU Entities or Developer Entities performing work on the CSU Property or the River Park Property or in connection with the Project; (f) any failure to comply with any applicable Law related to prevailing wage requirements by any CSU Party, CSU Entity, or any CSU-retained contractor performing work on the CSU Property or the River Park Property or in connection with the Project; (g) any Claim relating to non-payment of the RTCIP Fee or any third-party local fees with respect to the Project; (h) any Environmental Claim now or hereafter existing on, under, or affecting the CSU Property (but excluding any Environmental Claim determined to have been caused directly by the City or a City Party as a result of the City's maintenance, repair, or operation of any public utilities on or after the Effective Date); (i) any Claim arising directly from any CSU Party's or CSU Entity's maintenance, or failure to adequately maintain, the Onsite Portions of Murphy Canyon Creek, excluding, however any Claims arising from or relating to (1) an established breach of the City's representations, warranties, or covenants or (2) deficiencies or other conditions occurring or existing before or after the Effective Date on the Offsite Portions of Murphy Canyon Creek; (j) any Claim arising from any adverse impacts on the Wetland Mitigation Project or the Wetland Mitigation Project Site directly resulting from any negligence or Default under this Declaration by any CSU Party or CSU Entity; (k) any Claim arising from CSU's breach of its obligations under this Declaration related to the ADA Settlement Agreement, except to the extent that any Claim arises out of an established breach of the City's representations, warranties, or covenants; or (l) the death of any person or any accident, injury, loss, or damage whatsoever caused to any Person on the CSU Property or to the CSU Property itself occurring on or after the Effective Date, except to the extent such death, accident, injury, loss, or damage is directly caused by the established active negligence, sole negligence or willful misconduct of the City or a City Party. Notwithstanding the foregoing, CSU's indemnification obligations will not apply to any Claims to the extent arising out of the City's established sole negligence or willful misconduct, or any Environmental Claim directly arising out of conditions determined to have existed on the River Park Property, except to the extent determined to have been caused directly by CSU or any Developer Entity. The City shall notify CSU in writing within five (5) Business Days of the receipt of any notice of any indemnified Claim; provided that the failure to notify CSU in writing within such five (5) Business Day period shall not release CSU from the indemnification obligation set forth in this Section. Upon receipt of the City's notification, CSU shall assume the defense of the Claims, including the employment of counsel reasonably satisfactory to the City and CSU. CSU shall notify the City of CSU's desired legal counsel, in writing within five (5) Business Days after CSU's receipt of the City's written notice of a Claim. The City shall thereafter have five (5) Business Days within which to approve or disapprove CSU's choice of counsel, and if the City

fails to respond in writing within such time period, it shall be deemed to have approved CSU's choice of counsel. The City's approval of CSU's choice of counsel shall not be unreasonably withheld, conditioned or delayed. CSU's obligation to indemnify and defend the City Parties pursuant to this Declaration shall survive the expiration or termination of this Declaration, until any and all actual or prospective Claims regarding any matter subject to such obligation are fully, finally, and completely barred by applicable statutes of limitations. The terms of this Section shall be binding solely upon the fee owner of the portion of the CSU Property upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses.

16.2 Indemnification and Hold Harmless Agreement by City. The City shall defend, indemnify, and hold harmless the CSU Parties from and against any and all Claims related to this Declaration, the CSU Property, the River Park Property, or the Project arising from or relating to any of the following circumstances: (a) any willful misconduct, sole negligence or active negligence of the City or any City Parties on the CSU Property or the River Park Property or in connection with the Project; (b) any Claim arising from Default by the City under this Declaration; (c) any noncompliance with applicable Law, including in connection with the River Park, directly resulting from any negligence or Default under this Declaration by any City Parties; (d) any Claims for personal injury or property damage arising from events occurring prior to the Effective Date; or (e) any Claim attributable to or relating to the City or the City Parties' use, maintenance or operation of any City-owned public utilities or facilities located within the CSU Property or the River Park Property. Notwithstanding the foregoing, the City's indemnification obligations will not apply to any Claims to the extent arising out of the CSU's established sole negligence or willful misconduct. CSU shall notify the City in writing within five (5) Business Days of the receipt of any notice of any indemnified Claim; provided that the failure to notify the City in writing within such five (5) Business Day period shall not release the City from the indemnification obligation set forth in this Section. Upon receipt of CSU's notification, the City shall assume the defense of the Claims, including the employment of counsel reasonably satisfactory to the City and CSU. The City shall notify CSU of the City's desired legal counsel, in writing within five (5) Business Days after the City's receipt of CSU's written notice of a Claim. CSU shall thereafter have five (5) Business Days within which to approve or disapprove the City's choice of counsel and if CSU fails to respond in writing within such time period it shall be deemed to have approved the City's choice of counsel. CSU's approval of the City's choice of counsel shall not be unreasonably withheld, conditioned or delayed. The City's obligation to indemnify and defend the CSU Parties pursuant to this Declaration shall survive the expiration or termination of this Declaration, until any and all actual or prospective Claims regarding any matter subject to such obligation are fully, finally, and completely barred by applicable statutes of limitations.

17. ESTOPPEL CERTIFICATES. Each Party shall from time to time, within fifteen (15) Business Days after receipt of written request from the other Party, execute, acknowledge and deliver a statement in customary form (i) certifying that this Declaration is unmodified (whether by formal waiver, amendment, or otherwise) and in full force and effect or, if modified, stating the nature of such modification and certifying that this Declaration as so modified is in full force and effect (or, if this Declaration is claimed not to be in force and effect, specifying the grounds therefor), (ii) acknowledging that there are not, to the knowledge of the other Party, any uncured

Defaults on the part of such other Party hereunder (or specifying such Defaults if any are claimed), and (iii) certifying such other matters as the requesting Party or, with respect to CSU, the Developer Parties or their respective current or prospective development partners, mortgagees, insurance carriers, auditors, and/or potential purchasers may reasonably request. The failure to timely deliver a statement shall constitute a conclusive presumption that this Declaration is in full force and effect without modification except as may be represented by the requesting Party and that there are no uncured Defaults in the performance of the requesting Party, except as may be represented by the requesting Party.

18. MORTGAGEE PROTECTION. If any fee or ground leasehold interest of any portion of the CSU Property is encumbered by any financing lien or any other mortgage or deed of trust (each, a "**Security Instrument**", and the lender or other secured parties and/or beneficiaries thereunder, each a "**Secured Party**"), the City hereby agrees as follows:

18.1 Provided that the City receives written request from a Secured Party to receive copies of any notice of Default delivered by the City under this Declaration, together with the Secured Party's current and accurate address, then the City will give to each such Secured Party, at the Secured Party's address provided to the City in writing, a copy of each notice of Default at the same time as it gives a notice of Default to the defaulting party ("**Defaulting Party**"). The failure of a Secured Party to receive a copy of such notice of Default from the City shall not constitute a Default of the City under this Declaration.

18.2 Any Secured Party shall have the right, but not the duty, to cure any such Default and otherwise perform any other act and/or make any payment required of the Defaulting Party under this Declaration, within thirty (30) days after the expiration of the applicable cure period provided to the Defaulting Party under this Declaration. All acts performed and/or payments made by Secured Party within such cure period shall be as effective to cure any Default to the same extent as if made and performed by the Defaulting Party. If any non-monetary Default under this Declaration is such that possession of that portion, whether fee ownership or a ground leasehold interest, of the CSU Property which is encumbered by the applicable Security Instrument (the "**Subject Portion of the Property**") may be necessary to remedy the Default, Secured Party shall have a reasonable time period but not to exceed one hundred twenty (120) calendar days from the expiration of the cure period provided to the Defaulting Party under this Declaration within which to remedy such Default, provided that (i) Secured Party commences such cure within thirty (30) days after expiration of the cure period provided to the Defaulting Party under this Declaration and thereafter diligently pursues such cure to completion, (ii) Secured Party shall have fully cured any monetary Default within thirty (30) days after the expiration of the applicable cure period provided to the Defaulting Party under this Declaration and shall have continued to timely pay all monetary obligations of the Defaulting Party under this Declaration as and when the same are due and all monetary obligations of the Defaulting Party with respect to the Subject Portion of the Property, until completion of the cure, and (iii) Secured Party shall have performed all other obligations of the Defaulting Party under this Declaration and all other obligations of the Defaulting Party with respect to the Subject Portion of the Property, to the extent that they are susceptible of being performed by Secured Party, until completion of the cure.

18.3 Upon the occurrence of a Default under the Security Instrument, the City acknowledges that Secured Party may acquire the Subject Portion of the Property by completion of a foreclosure of the Security Instrument or by deed in lieu of foreclosure or otherwise. This Declaration shall survive any such acquisition of the Subject Portion of the Property by Secured Party, but Secured Party shall have no liability or obligation with respect to performance of those obligations of the Defaulting Party under this Declaration arising prior to Secured Party's actual acquisition of the Subject Portion of the Property. Following Secured Party's acquisition of the Subject Portion of the Property, upon the City's written request, Secured Party shall agree to assume those obligations of the Defaulting Party under this Declaration arising from and after the date of such acquisition by Secured Party, by execution of an assignment and assumption agreement in form and content reasonably acceptable to the City and the Secured Party.

18.4 The breach by the Defaulting Party of any of its obligations under this Declaration, and the exercise of the City's remedies with respect to any such breach by the Defaulting Party, shall not defeat or render invalid the lien of any Security Instrument.

18.5 The City shall, at no cost to the City, execute such additional commercially reasonable terms and conditions as may be requested in writing by any Secured Party in order to clarify or supplement the foregoing mortgagee protection provisions.

19. CITY ADMINISTRATION. The Mayor shall administer this Declaration on the City's behalf. Except as otherwise expressly provided in this Declaration, the Mayor has the authority to approve or consent to those matters in this Declaration requiring the City's approval or consent and to make all other decisions on the City's behalf, subject to the Mayor's retained and reserved sole and absolute discretion to seek the City Council's approval of any such matter.

20. GOVERNING LAW. The substantive and procedural laws of the State of California shall govern the interpretation and enforcement of this Declaration, without application of statutes or principles relating to conflicts of laws.

21. NON-LIABILITY OF OFFICIALS AND EMPLOYEES. No elected official, officer, contractor, consultant, attorney, employee, or agent of the City shall be personally liable to CSU, any voluntary or involuntary successor or assign of CSU, or any lender or other Person holding an interest in CSU, the CSU Property, or the Project, in the event of any breach of this Declaration by the City, or for any amount that may become due to CSU or its successors or assigns from the City under this Declaration, or on any obligations arising under this Declaration. Likewise, no elected official, officer, contractor, consultant, attorney, employee, or agent of CSU shall be personally liable to the City, any voluntary or involuntary successor or assign of the City, in the event of any breach of this Declaration by CSU, or for any amount that may become due to the City or its successors or assigns from CSU under this Declaration, or on any obligations arising under this Declaration.

22. NOTICES.

22.1 Delivery. Any and all notices and communications pursuant to or as required by this Declaration must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United

Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party; or (iv) electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from a named recipient representing the affected Party in response to a notice email). To conserve resources and reduce administrative burden, the Parties intend to deliver notices and communications via email, and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. Any notice shall be deemed received by the addressee, on the Business Day that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or two (2) Business Days after the notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a Party may give any notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any notices or communications delivered via email.

22.2 Addresses. The notice addresses for the Parties, as of the Effective Date, are as follows:

To City:

City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Cybele Thompson, Director, Real Estate Assets Dept.
email: thompsonc@sandiego.gov

with a copy to:

San Diego City Attorney's Office
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Attn: Kevin Reisch, Esq., Senior Chief Deputy City Attorney
email: kreisch@sandiego.gov

To CSU:

The Board of Trustees of the California State University
401 Golden Shore, 5th Floor
Long Beach, CA 90802-4210
Attn: Steve Relyea, Executive Vice Chancellor and Chief Financial Officer
email: srelyea@calstate.edu

with a copy to:

Office of the President
San Diego State University
5500 Campanile Drive
San Diego, CA 92182-8000
Attn: Adela de la Torre, President
email: presoffi@sdsu.edu

and to:

G. Andrew Jones, Executive Vice Chancellor and General Counsel
The California State University
Office of General Counsel
401 Golden Shore
Long Beach, CA 90802-4210
email: gajones@calstate.edu

and to:

Sheppard Mullin Richter & Hampton LLP
12275 El Camino Real, Suite 200
San Diego, CA 92130
Attn: Domenic C. Drago, Esq.
email: ddrago@sheppardmullin.com

22.3 Changes. Each Party shall promptly deliver written notice to the other Party regarding any change in such Party's notice address.

23. JURISDICTION AND VENUE. The Parties acknowledge and agree that this Declaration is entered into and is to be fully performed in the City of San Diego, County of San Diego, State of California, and that all legal actions arising from this Declaration shall be filed in San Diego County Superior Court or the United States District Court with jurisdiction in the County of San Diego, California.

24. INCORPORATION OF RECITALS. The Recitals of fact set forth preceding this Declaration are true and correct and are incorporated into this Declaration, in their entirety, by this reference.

25. PRINCIPLES OF INTERPRETATION. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Declaration. The Parties have both participated substantially in the negotiation, drafting, and revision of this Declaration, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Declaration may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which govern all language in this Declaration. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each collective noun in this Declaration shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference

in this Declaration to any document, including this Declaration, refers to such document as modified from time to time (excepting any modification that violates this Declaration or where the context of this Declaration clearly dictates otherwise), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" includes the word "and," except where the context clearly requires otherwise. The words "shall" and "will" have the same meaning as the word "must" and denote a mandatory action. The word "may" denotes a permissive action. Every reference in this Declaration to a law, statute, regulation, order, form, or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

26. COUNTERPART ORIGINALS; INTEGRATION. This Declaration may be signed in multiple counterpart originals, each of which is deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Declaration, the exhibits attached to this Declaration, and the documents referenced in this Declaration represent the entire understanding of the Parties and supersede all previous negotiations, letters of intent, memoranda of understanding, or agreements between the Parties with respect to all or any part of the subject matter of this Declaration.

27. SEVERABILITY. If any term or provision of this Declaration or application of any term or provision of this Declaration to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Declaration or the application of such term or provision to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity or unenforceability. All remaining terms and provisions of this Declaration shall be valid and shall be enforced to the fullest extent allowed by Law.

28. AMENDMENTS. This Declaration may be amended only upon the approval and signature of both Parties. Any amendment to this Declaration that is signed by one Party, but not the other Party, shall be null and void and of no force or effect whatsoever. If the CSU Property is subdivided in the future, upon request by either Party, the Parties shall record an amendment to this Declaration partially releasing certain subdivided portions of the CSU Property consistent with the intent of this Declaration. Upon performance of certain covenants that are not recurring covenants, the Parties may also record an amendment to this Declaration terminating this Declaration as to such covenants that have been fully performed. For example, if the CSU Property is subdivided in a manner that creates a separate legal parcel for the New Stadium and the Existing Stadium has been demolished, the Parties shall, at the request of either Party, amend this Declaration to provide, among other things, that Section 5.2 and Section 5.3 of this Declaration apply only to the parcel for the New Stadium and is released as to all other portions of the CSU Property. Without limiting the foregoing rights to amend this Declaration, the Parties hereby acknowledge and agree that (i) in furtherance of the development of the Project, CSU currently intends to record a subdivision map for the CSU Property which will subdivide the CSU Property into various separate legal parcels, (ii) nothing in this Declaration shall be construed as granting the City any right to approve any such subdivision map and/or the legal parcels created thereby, (iii) certain provisions of this Declaration only apply to specific areas of the CSU Property and/or specific components of the Project, and thus, after a subdivision map is recorded, such provisions will not be applicable to the entire CSU Property, and (iv) at such time, without need for City consent or approval, in addition to such subdivision map and all

matters contained therein, CSU shall be allowed, in its sole discretion, to record against title to the CSU Property one or more instruments which specifically identify which legal parcels created by the subdivision map contain specific components of the Project and/or specific areas of the CSU Property.

29. LEGAL COSTS. If either Party commences any action or proceeding seeking to interpret, enforce, reform, or rescind this Declaration or any provision of this Declaration, the prevailing Party (as determined by the court or arbiter in a final decision) shall be entitled to receive payment of its Legal Costs from the other Party. This Section 29 shall survive the expiration or termination of this Declaration.

30. NO WAIVER. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants, conditions, restrictions, or agreements contained in this Declaration shall not be deemed a waiver of such term, covenant, condition, restriction, or agreement. Any waiver or relinquishment of any rights or powers under this Declaration at any one time or more times shall not be deemed a waiver or relinquishment of such right or power at any other time or times.

31. TIME IS OF THE ESSENCE. Time is of the essence in the performance of the Parties' obligations under this Declaration.

32. UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE. This Section shall not apply to completion of the New Stadium, which shall be governed by the Section 2.3 of this Declaration or completion of the River Park Improvements, which shall be governed by Section 2.7 of this Declaration. Subject to the foregoing and except as otherwise expressly set forth in this Declaration, performance by either Party under this Declaration shall not be deemed or considered to be in Default or breach, where such Default or breach is due to an Unavoidable Delay. Any Party claiming Unavoidable Delay shall provide written notice to the other Party: (a) within thirty (30) days after such Party knows of such Unavoidable Delay; and (b) within thirty (30) days after such Unavoidable Delay ceases to exist. To be effective, any written notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay shall commence on the date of occurrence of the Unavoidable Delay and shall continue until the end of the condition causing the Unavoidable Delay. The Party seeking to be excused from performance shall exercise reasonable, diligent efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

33. NO THIRD PARTY BENEFICIARIES. The performance of the Parties' respective obligations under this Declaration are not intended to benefit any Person other than the City and CSU. No Person other than a signatory to this Declaration shall have any rights or causes of action against any Party to this Declaration as a result of that Party's performance or non-performance under this Declaration.

34. NO OTHER REPRESENTATIONS OR WARRANTIES. Except as expressly set forth in this Declaration, neither Party makes any representation or warranty to the other Party that is material to this Declaration.

35. RELATIONSHIP OF PARTIES. Each of the Parties is an independent contracting entity. Nothing in this Declaration shall create any partnership, joint venture, or similar business arrangement, relationship, or association between the Parties.

36. SURVIVAL OF DECLARATION. All of the provisions of this Declaration shall be applicable to any dispute between the Parties arising from this Declaration, whether prior to or following expiration or termination of this Declaration, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable limitations periods.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, a duly authorized representative of each Party has signed this Declaration, to be effective as of the Effective Date.

CITY:

Date: _____ City of San Diego,
a California municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:
MARA W. ELLIOTT, City Attorney

By: _____
Kevin Reisch
Senior Chief Deputy City Attorney

CSU:

The Board of Trustees of the California State University,
the State of California acting in its higher education
capacity, on behalf of San Diego State University

Date: _____ By _____
Name: _____
Title: _____

APPROVED AS TO FORM:

SHEPPARD MULLIN RICHTER &
HAMPTON, LLP

By: _____
Domenic C. Drago, Counsel for The
Board of Trustees of the California
State University, which is the State of
California acting in its higher
education capacity on behalf of San
Diego State University

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ (date), before me, _____

(name and title of notary public), personally appeared _____

(name of signer), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A TO DECLARATION

Legal Description of the CSU Property

[to be inserted later; duplicate of Exhibit 2-A to PSA]

EXHIBIT B TO DECLARATION

Legal Description of the Murphy Canyon Creek Parcel

[to be inserted later; duplicate of Exhibit 3-A to PSA]

EXHIBIT C TO DECLARATION

Legal Description of the River Park Property

[to be inserted later; duplicate of Exhibit 4-A to PSA]

EXHIBIT D TO DECLARATION

Project Site Plan

[to be inserted later; duplicate of Exhibit 6 to PSA]

EXHIBIT E TO DECLARATION

EDU Exhibit

Proposed Land Use Conversion to Dwelling Unit Equivalents

Description and Size	Quantity	Units	DUE* Conversion Factor	Unit	Quantity (DUEs)
Supermarket	12	ksf	15	DUE/ksf	180
Neighborhood Retail	83	ksf	12	DUE/ksf	996
Apartments	4,300	du	1	DUE/du	4300
Student Focused Housing	300	du	0.73	DUE/du	220
Commercial Office	1,165	ksf	2.86	DUE/ksf	3330
Medical Office	100	ksf	2.67	DUE/ksf	267
Scientific Research	301	ksf	1.33	DUE/ksf	401
Hotel	400	room	1.67	DUE/room	667
Racquetball/Tennis/Health Club	25	ksf	6.67	DUE/ksf	167
Community Park/River Park	6	acre	0.83	DUE/acre	5
Active Parks	50	acre	8.33	DUE/acre	417
Landscaped Areas, Paseos, Trails, etc.	27.6	acre	-	DUE/acre	-
PROJECT TOTAL					10,950

*DUE=Dwelling Unit Equivalent

ATTACHMENT 22 TO PURCHASE AND SALE AGREEMENT

Declaration of Affordable Housing Restrictions

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Cybele Thompson,
Director, Real Estate Assets Dept.

Space above line for Recorder's use only

Exempt from Recording Fees per Cal. Govt. Code § 27383
Exempt from Documentary Transfer Tax per Cal. Govt. Code § 11922

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
REGARDING AFFORDABLE HOUSING DEVELOPMENT ON
SDSU MISSION VALLEY PROPERTY**

This Declaration of Covenants, Conditions, and Restrictions Regarding Affordable Housing Development on SDSU Mission Valley Property ("**Declaration**") is dated as of [REDACTED], 2020 ("**Effective Date**"), and is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("**City**"), the San Diego Housing Commission, a public agency ("**Commission**"), and the BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, the State of California acting in its higher education capacity, on behalf of San Diego State University ("**CSU**").

COVENANTS, CONDITIONS, AND RESTRICTIONS

The City, Commission and CSU enter into this Declaration with reference to the following facts and circumstances:

A. The City's voters approved a citizens' initiative measure, commonly known as Measure G, on November 6, 2018, governing the City's sale to CSU of certain real property referred to therein as the "Existing Stadium Site" (defined as the "**CSU Property**" in Section 1).

B. Measure G is comprised of two main components: (i) Sections 1, 2, 4, 5, 6, 7, and 8 of the citizens' initiative, which describe, among other things, the purpose, intent, and findings supporting the citizen's initiative; and (ii) Section 3 of the citizens' initiative, which adds new section 22.0908 to the San Diego Municipal Code ("**Section 22.0908 Conditions**"). Measure G states that the CSU Property is needed by CSU/SDSU for "Bona Fide Public Purposes," as that term is defined in the Section 22.0908 Conditions, and for that reason the City shall sell the CSU Property to CSU in accordance with the City Charter, but only if such sale is in compliance with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in Measure G.

C. Measure G does not obligate CSU to purchase the CSU Property or take any other actions related to the CSU Property, if CSU chooses not to purchase the CSU Property. However, Measure G requires the City to ensure that the City's negotiated sale of the CSU Property complies with Measure G.

D. California Education Code section 66606 vests CSU with "full power and responsibility in the construction and development of any state university campus, and any buildings or other facilities or improvements connected with the California State University." Section 22.0908(x)(12) states "Nothing in this Initiative abrogates, or is intended to abrogate, the authority of the Board of Trustees of the California State University." CSU is the State of California acting in its higher education capacity, and is generally exempt from local and regional ordinances, regulations, policies and rules, including, without limitation, zoning and land use regulations, when its development, construction, facilities, and uses are in furtherance of its governmental purpose, unless applicable Law specifically says otherwise. Without waiver of CSU's standing and legal authority as a state agency, and to enable the City to ensure that the sale of the CSU Property complies with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in Measure G, CSU agrees to be bound by the terms and conditions set forth in this Declaration, and the Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 2020 between the Parties ("**Purchase Agreement**"), and its attachments.

E. In light of the circumstances stated in Recitals A through D above, the Parties negotiated and entered into the Purchase Agreement and related agreements pursuant to which CSU agreed, strictly as a matter of contract, to develop and operate the CSU Property subject to terms and conditions in the Purchase Agreement and related agreements, and in a manner satisfying the City's concern that the sale must comply the Section 22.0908 Conditions and fulfill the intent and purposes outlined in Measure G. By entering into these agreements, CSU is not waiving its standing and legal authority as a state agency, though it agrees, due to the unique circumstances at hand, to be contractually bound by the terms of such agreements. The Parties negotiated the terms of the Purchase Agreement and related agreements in response to the local voters' approval of Measure G and intend all such agreements to be consistent with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G.

F. San Diego Municipal Code section 22.0908(l) requires the City to ensure that the sale and ultimate development of the CSU Property shall require development within the Existing Stadium Site (i.e., CSU Property) to comply with the City's "affordable housing requirements." The Parties agree that compliance with the Affordable Housing Requirement (as defined in Section 1) and the other terms of this Declaration ensures compliance with the City's "affordable housing requirements" consistent with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G.

G. In accordance with the terms and conditions set forth in the Purchase Agreement, CSU has purchased the CSU Property to develop the Project (as defined in Section 1 below), which consists of various improvements of local, regional and statewide public benefit on or about the CSU Property, and in connection with development of the Project, will construct, operate and maintain or cause Affordable Housing Developers (as defined in Section 1) to construct, operate and maintain Affordable Housing Units (as defined in Section 1) as required herein.

H. This Declaration memorializes CSU's commitments relating to: (i) the production of Affordable Housing Units (as defined in Section 1 below) on the CSU Property; (ii) the time frame for the construction and occupancy of Affordable Housing Units; (iii) the restriction of each real property interest, including any leasehold interest, within any portion of the CSU Property on which Affordable Housing Units are required to be constructed and occupied in accordance with this Declaration; and (iv) other issues relating to the construction and occupancy of Affordable Housing Units on the CSU Property.

AGREEMENT

In consideration of the promises and covenants set forth in this Declaration, the City and CSU agree as follows:

1. DEFINITIONS AND SECTION REFERENCES. All initially capitalized terms used in this Declaration shall have the meanings set forth in this Section 1 or, if not set forth in this Section 1, where such term first appears in this Declaration, unless the context of usage clearly requires another meaning. All section references in this Declaration are to particular sections of this Declaration, unless otherwise expressly stated.

1.1 Additional Housing Opportunity Unit. Housing units that CSU plans to make available for occupancy by faculty, staff, undergraduate students with families and graduate students at below market rental rates, but not necessarily to Targeted Households. Additional Housing Opportunity Units shall not be counted as Affordable Housing Units, but instead will be considered Market Rate Units for purposes of determining the Affordable Housing Requirement.

1.2 Affordable Housing Developer. Any developer, licensee, contractor, subcontractor, or other Person who enters into an Affordable Housing Development Contract with CSU or its designee/affiliate or auxiliary organization or is issued a Building Permit authorizing the construction of any Affordable Housing Units on the CSU Property.

1.3 Affordable Housing Development Contract. A contract, subcontract, lease, license, easement, or any similar arrangement entered into between CSU (or its designee/affiliate or auxiliary organization) and an Affordable Housing Developer, under which the Affordable Housing Developer agrees to develop and construct any Affordable Housing Units on the CSU Property.

1.4 Affordable Housing For-Sale Unit. Each for-sale residential dwelling unit to be constructed on the CSU Property that is restricted for initial sale to, and occupancy by an individual or family earning no more than one hundred percent (100%) of the then-current AMI, as adjusted for family size.

1.5 Affordable Housing Phasing Plan. CSU's plan to satisfy the Affordable Housing Requirement in connection with the Project by causing Affordable Housing Units to be constructed on the CSU Property in multiple Building Phases, such that the phased timing of construction of Affordable Housing Units on the CSU Property generally corresponds to the phased timing of construction of Market Rate Units on the CSU Property, as more particularly described in Section 2.2.

1.6 Affordable Housing Procedures. The SDSU Mission Valley Affordable Housing Implementation and Monitoring Procedures, as the same may be modified by CSU in the future so long as such modifications do not conflict with the requirements of this Declaration.

1.7 Affordable Housing Rental Unit. Each rental residential dwelling unit to be constructed on the CSU Property that is restricted for occupancy by a Targeted Rental Household, as provided for in this Declaration, but excluding any Additional Housing Opportunity Units.

1.8 Affordable Housing Requirement. The general requirement under this Declaration, without limiting any more specific requirements of this Declaration, that CSU construct, or cause to be constructed, on the CSU Property, as further described in Section 2.1, the number of Affordable Housing Units equal to at least ten percent (10%) of the cumulative total of Dwelling Units ultimately constructed on the CSU Property upon full build-out of the Project.

1.9 Affordable Housing Unit. Any Affordable Housing For-Sale Unit or Affordable Housing Rental Unit that CSU causes to be constructed on the CSU Property in accordance with this Declaration.

1.10 AMI. The area median income, as adjusted for family size, for the San Diego-Carlsbad Metropolitan Statistical Area as published by HUD on an annual basis. If HUD ceases to publish the AMI, CSU may, in its reasonable discretion, use any other reasonably comparable method of computing the AMI or the Annual Housing Costs after conferring with the Commission.

1.11 Annual Housing Costs. For each Affordable Housing Unit, all housing costs applicable to the Affordable Housing Unit, as reasonably determined by CSU, including, rent or lease payments, taxes, insurance, assessments and similar costs.

1.12 Building Permit. Any permit or approval required or permitted to be issued by CSU, or its designee/affiliate or auxiliary organization, relating to the construction of any Dwelling Unit in the Project.

1.13 Building Phase. Individually, Building Phase 1, Building Phase 2, Building Phase 3, or Building Phase 4, as applicable.

1.14 Building Phases. Collectively, Building Phase 1, Building Phase 2, Building Phase 3, and Building Phase 4.

1.15 Building Phase 1. The first residential development phase of the Project, consisting of up to a total of 1,000 Dwelling Units as follows: (a) the construction of up to nine hundred (900) Market Rate Units on the CSU Property by Building Threshold Date 1; and (b) the corresponding issuance of a Building Permit, by Building Threshold Date 1, for the construction of up to one hundred (100) Affordable Housing Units on the CSU Property, or a lesser number so long as the number of Building Permits issued for Affordable Housing Units equals ten percent (10%) of the number of Building Permits issued for Market Rate Units on the CSU Property. As described in Section 2.2(a), the completion of such Affordable Housing Units must occur within three (3) years after the date of issuance of the pertinent Building Permit, as evidenced by the issuance of a Certificate of Occupancy for such Affordable Housing Units.

1.16 Building Phase 2. The second residential development phase of the Project, consisting of up to a total of 1,000 Dwelling Units as follows: (a) the construction of up to nine hundred (900) Market Rate Units on the CSU Property by Building Threshold Date 2 (excluding all Market Rate Units constructed during Building Phase 1); and (b) the corresponding issuance of a Building Permit, by Building Threshold Date 2, for the construction of up to one hundred (100) Affordable Housing Units on the CSU Property, or a lesser number so long as the number of Building Permits issued for Affordable Housing Units equals ten percent (10%) of the number of Building Permits issued for Market Rate Units on the CSU Property. As described in Section 2.2(a), the completion of such Affordable Housing Units must occur within three (3) years after the date of issuance of the pertinent Building Permit, as evidenced by the issuance of a Certificate of Occupancy for such Affordable Housing Units.

1.17 Building Phase 3. The third residential development phase of the Project consisting of up to a total of 1,000 Dwelling Units as follows: (a) the construction of up to nine hundred (900) Market Rate Units on the CSU Property by Building Threshold Date 3 (excluding all Market Rate Units constructed during Building Phase 1 and Building Phase 2); and (b) the corresponding issuance of a Building Permit, by Building Threshold Date 3, for the construction of up to one hundred (100) Affordable Housing Units on the CSU Property, or a lesser number so long as the number of Building Permits issued for Affordable Housing Units equals ten percent (10%) of the number of Building Permits issued for Market Rate Units on the CSU Property. As described in Section 2.2(a), the completion of such Affordable Housing Units must occur within three (3) years after the date of issuance of the pertinent Building Permit, as evidenced by the issuance of a Certificate of Occupancy for such Affordable Housing Units.

1.18 Building Phase 4. The fourth residential development phase of the Project, consisting of up to a total of 1,600 Dwelling Units as follows: (a) the construction of up to one thousand four hundred forty (1,440) Market Rate Units on the CSU Property by Building Threshold Date 4 (excluding all Market Rate Units constructed during Building Phase 1, Building Phase 2, and Building Phase 3); and (b) the corresponding issuance of a Building Permit, by Building Threshold Date 4, for the construction of up to one hundred sixty (160) Affordable Housing Units on the CSU Property, or a lesser number so long as the number of Building Permits issued for Affordable Housing Units equals ten percent (10%) of the number of Building Permits issued for Market Rate Units on the CSU Property. As described in Section 2.2(a), the completion of such Affordable Housing Units must occur within three (3) years after the date of issuance of the pertinent Building Permit, as evidenced by the issuance of a Certificate of Occupancy for such Affordable Housing Units.

1.19 Building Threshold Date. Individually, Building Threshold Date 1, Building Threshold Date 2, Building Threshold Date 3, or Building Threshold Date 4, as applicable.

1.20 Building Threshold Dates. Collectively, Building Threshold Date 1, Building Threshold Date 2, Building Threshold Date 3, and Building Threshold Date 4.

1.21 Building Threshold Date 1. The date on which the Certificate of Occupancy for the nine hundredth (900th) Market Rate Unit in the Project is issued.

1.22 Building Threshold Date 2. The date on which the Certificate of Occupancy for the one thousand eight hundredth (1,800th) Market Rate Unit in the Project is issued.

1.23 Building Threshold Date 3. The date on which the Certificate of Occupancy for the two thousand seven hundredth (2,700th) Market Rate Unit in the Project is issued.

1.24 Building Threshold Date 4. The date on which the Certificate of Occupancy for the four thousand one hundred fortieth (4,140th) Market Rate Unit in the Project is issued.

1.25 Business Day. A day other than Saturday, Sunday, or any day on which (i) federally-insured banks are closed, (ii) the County Recorder is closed, or (iii) the administrative offices of either the City or CSU are closed.

1.26 Campus Master Plan. The San Diego State University Mission Valley Campus Master Plan, approved by the CSU Board of Trustees on January 29, 2020.

1.27 CEQA. Collectively, the California Environmental Quality Act, set forth at California Public Resources Code section 21000 *et seq.*, and the related CEQA Guidelines, set forth at California Code of Regulations, title 14, section 15000 *et seq.*

1.28 Certificate of Occupancy. A document issued by or on behalf of CSU regarding the completed construction of any Dwelling Unit within the Project, certifying that the constructed Dwelling Unit complies with applicable Law and is in a condition suitable for human residential occupancy.

1.29 City. The City of San Diego, a California municipal corporation, and any assignee of or successor to such municipal corporation's rights, powers, or responsibilities.

1.30 City Affordable Housing Ordinance. The City's Inclusionary Affordable Housing Regulations, set forth in Chapter 14, Article 2, Division 13 of the San Diego Municipal Code, reflecting only the content in effect as of January 1, 2020.

1.31 City Council. The City Council of the City of San Diego.

1.32 City Parties. Collectively, the City, the City Council, and the City's officials, officers, employees, agents, and attorneys.

1.33 Claim. Any claim, loss, cost, damage, expense, liability, lien, legal proceeding, enforcement action, administrative action or proceeding, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, notice of violation, fine, or penalty of any kind (including reasonable expert fees and expenses and, if the Party is in Default regarding its obligations to provide indemnification by improperly failing to provide a defense for any indemnified Person after expiration of the notice and cure periods described in Section 7, then Legal Costs of each such indemnified Person), and all financial or performance obligations arising from any judgment, decree, order, or other written decision issued by any Government representative or entity.

1.34 Commission. The San Diego Housing Commission, a public agency.

1.35 Commission Parties. The Commission, the Housing Authority of the City of San Diego, and any of their respective Commissioners, members, officers, agents, servants, employees, and attorneys.

1.36 County. The County of San Diego, California.

1.37 CSU. The Board of Trustees of the California State University, the State of California acting in its higher education capacity, on behalf of San Diego State University, and any assignee of or successor to the rights, powers, or responsibilities of such entity under this Declaration.

1.38 CSU Board of Trustees. The Board of Trustees of the California State University.

1.39 CSU Parties. Collectively, CSU, the CSU Board of Trustees, and CSU's officials, officers, employees, agents, and attorneys.

1.40 CSU Property. That certain real property commonly known as the San Diego County Credit Union stadium site, generally located at 9449 Friars Road in the City of San Diego, County of San Diego, State of California, as legally described in Exhibit A attached to this Declaration.

1.41 Default. Defined in Section 7.

1.42 Developer Debt Instruments. Any instruments recorded in the Official Records against any portion of the CSU Property (including any future leasehold interest in any portion of the CSU Property) to memorialize, or secure the repayment of, any loans, bond financing, or other indebtedness incurred by any Person, including any Affordable Housing Developer, in connection with such Person's financing, development, construction, or operation of any Dwelling Units within the Project.

1.43 Development-Specific Declaration. A declaration of covenants, conditions, and restrictions to be recorded in Senior Priority against any portion of the CSU Property (including any future leasehold interest in any portion of the CSU Property) to secure an Affordable Housing Developer's performance of obligations under this Declaration with respect to the construction, rental, and occupancy of Affordable Housing Units for which a Building Permit will be issued. CSU, in consultation with the Commission, will develop a form of Developer-Specific Declaration for Affordable Housing Rental Units prior to the issuance of any Building Permit for an Affordable Housing Unit.

1.44 Development-Specific Regulatory Deed of Trust. A deed of trust to be recorded in Senior Priority against any portion of the CSU Property (including any future leasehold interest in any portion of the CSU Property) to secure an Affordable Housing Developer's performance of obligations under this Declaration and the Development-Specific Declaration with respect to the construction, rental, and occupancy of Affordable Housing Units for which a Building Permit will be issued. CSU, in consultation with the Commission, will develop a form of Developer-Specific Regulatory Deed of Trust prior to the issuance of any Building Permit for an Affordable Housing Unit.

1.45 Development-Specific Regulatory Documents. Collectively, the Development-Specific Declaration and the Development-Specific Regulatory Deed of Trust, both of which are to be signed, in recordable form, by any Affordable Housing Developer who will construct any Affordable Housing Units on the CSU Property.

1.46 Dwelling Units. Collectively, Affordable Housing Units and Market Rate Units, including Additional Housing Opportunity Units.

1.47 Effective Date. Defined in the preamble of this Declaration.

1.48 Federal. Relating or pursuant to the authority of the federal government of the United States of America.

1.49 Final EIR. The San Diego State University Mission Valley Campus Master Plan Environmental Impact Report, certified by the CSU Board of Trustees with respect to the Project in compliance with CEQA on January 29, 2020.

1.50 General Contract Terms and Conditions. The CSU General Contract Terms and Conditions prepared by the Office of the Chancellor, Capital Planning, Design and Construction, June 2019, as the same may be amended, modified or supplemented in the future.

1.51 Government. All courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City, or otherwise), whether now or later in existence.

1.52 Housing Status Report. Until build out of all Dwelling Units planned for the CSU Property or until CSU informs the Commission that it does not intend to construct additional Dwelling Units on the CSU Property, an annual written report, the form of which is acceptable to the Commission and CSU, identifying each Building Permit and each Certificate of Occupancy issued by CSU for the construction or occupancy of any Dwelling Units (including the number of Dwelling Units, categorized into Market Rate Units and Affordable Housing Units, the number of Additional Housing Opportunity Units and below market rental terms for the same, and the affordability levels for Affordable Housing Units occupied by Targeted Households) issued during the immediately preceding year and cumulatively as to all prior years, and describing CSU's progress in complying with the Affordable Housing Requirement.

1.53 HUD. The U.S. Department of Housing and Urban Development, or any successor Federal agency performing similar functions.

1.54 Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable in any way to the CSU, the CSU Property, or the development, construction, use, maintenance, operation, or occupancy of Affordable Housing Units on the CSU Property, or otherwise relating to this Declaration or any rights, obligations, or remedies under this Declaration, in force on the Effective Date of this Declaration.

1.55 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding or other matter for which such Person is entitled to reimbursement, including reasonable attorneys' fees and court costs.

1.56 Market Rate Unit. Each residential dwelling unit (including any Additional Housing Opportunity Unit) that is not an Affordable Housing Unit constructed on the CSU Property.

1.57 Official Records. The official records of the Office of the San Diego County Recorder.

1.58 Parties. Collectively, the City, the Commission and CSU.

1.59 Party. Individually, the City, the Commission, and CSU, as applicable

1.60 Performance Security. Any payment and performance bond, deed of trust, letter of credit, or other security instrument (in addition to any Development-Specific Regulatory Documents) that CSU shall require to secure an Affordable Housing Developer's obligation to construct certain Affordable Housing Units authorized under an applicable Building Permit, as further described in Section 3.1 of this Declaration.

1.61 Declaration of Property Development Restrictions and Permitting. The Declaration of Covenants, Conditions, and Restrictions Regarding Development and Permitting of SDSU Mission Valley Property, recorded in the Official Records against the CSU Property in connection with the Purchase Agreement Closing concurrently with the recording of this Declaration in the Official Records.

1.62 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.63 Project. The project to be developed, constructed, and operated by CSU, or under the direction or oversight of CSU, on or about the CSU Property in accordance with the Campus Master Plan and the Final EIR for the Project.

1.64 Purchase Agreement. Defined in Recital D of this Declaration.

1.65 Purchase Agreement Closing. The closing of the transaction under the Purchase Agreement, by which CSU acquired fee title ownership of the CSU Property from the City.

1.66 Senior Priority. A circumstance in which a specified document is recorded in the Official Records against all or a specified portion of the CSU Property (including a future leasehold interest) in connection with this Declaration or the development of any Affordable Housing Units in a position that is senior in priority relative to all Developer Debt Instruments (as applicable in each instance) recorded in the Official Records.

1.67 State. The State of California.

1.68 Targeted Household. A household whose aggregate gross annual income qualifies the household as a Targeted Rental Household as further specified in this Declaration. Subject to Section 2.6, a Targeted Household shall not include any student who is identified as a "dependent"

on any Person's tax return for purposes of the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the same Dwelling Unit.

1.69 Targeted Rental Household. An individual or family earning not more than sixty percent (60%) (or other threshold amount if averaging is employed pursuant to the next sentence) of the then-current AMI, as adjusted for family size. CSU may elect to provide for a range of affordability levels for Affordable Housing Rental Units, which shall be permitted so long as, on average, the Affordable Housing Rental Units are occupied by an individual or family earning not more than sixty percent (60%) of the then-current AMI, as adjusted for family size.

1.70 Unavoidable Delay. A delay in performing any obligation under this Declaration arising from, or on account of, any cause beyond the performing party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, regional natural disasters, pandemics, current or future COVID-19 orders and/or mandates from federal, state or local governments, recession, economic slowdown or other conditions affecting the housing economy, inability to obtain required materials or governmental delays (excluding governmental delays of a Party asserting the existence of an Unavoidable Delay). Unavoidable Delay shall not under any circumstances include delay caused by the financial condition, insolvency, or inability to obtain financing on the part of the party asserting that Unavoidable Delay exists.

2. CONSTRUCTION AND OCCUPANCY OF AFFORDABLE HOUSING UNITS.

CSU, for itself and its successors and assigns, covenants to and for the benefit of the City and the Commission, that CSU shall timely comply with all provisions of this Section 2.

2.1 Satisfaction of Affordable Housing Requirement. Upon completion of construction of all Dwelling Units on the CSU Property, CSU will cause the Affordable Housing Requirement to be satisfied, such that at least ten percent (10%) of the total number of Dwelling Units on the CSU Property will be set aside and reserved as Affordable Housing Units in accordance with this Declaration. If built out as planned, the Project will contain up to 4,600 Dwelling Units constructed over four Building Phases; provided however, CSU makes no representation or guarantee that 4,600 Dwelling Units will actually be constructed on the CSU Property but only that the Affordable Housing Requirement will be satisfied with respect to the number of Dwelling Units actually constructed on the CSU Property.

2.2 Affordable Housing Phasing Plan. Subject to Sections 2.3 and 2.5, CSU will cause the Affordable Housing Phasing Plan to be satisfied as follows:

(a) Building Phase 1. On or before Building Threshold Date 1, CSU will cause one or more Building Permits to be issued for the construction of at least one hundred (100) Affordable Housing Units corresponding to Building Phase 1 of the Project. No later than three (3) years after Building Threshold Date 1, CSU will cause at least one hundred (100) Affordable Housing Units to be completed within the Project, as evidenced by CSU's issuance of a Certificate of Occupancy for all such Affordable Housing Units.

(b) Building Phase 2. On or before Building Threshold Date 2, CSU will cause one or more Building Permits to be issued for the construction of at least one hundred (100)

Affordable Housing Units corresponding to Building Phase 2 of the Project, such that the cumulative total of Affordable Housing Units for which a Building Permit has been issued in Building Phase 1 and Building Phase 2 is at least two hundred (200). No later than three (3) years after Building Threshold Date 2, CSU will cause a cumulative total of at least two hundred (200) Affordable Housing Units (including the Affordable Housing Units corresponding to both Building Phase 1 and Building Phase 2) to be completed within the Project, as evidenced by CSU's issuance of a Certificate of Occupancy for all such Affordable Housing Units.

(c) Building Phase 3. On or before Building Threshold Date 3, CSU will cause one or more Building Permits to be issued for the construction of at least one hundred (100) Affordable Housing Units corresponding to Building Phase 3 of the Project, such that the cumulative total of Affordable Housing Units for which a Building Permit has been issued in Building Phase 1, Building Phase 2, and Building Phase 3 is at least three hundred (300). No later than three (3) years after Building Threshold Date 3, CSU will cause a cumulative total of at least three hundred (300) Affordable Housing Units (including the Affordable Housing Units corresponding to Building Phase 1, Building Phase 2, and Building Phase 3) to be completed within the Project, as evidenced by CSU's issuance of a Certificate of Occupancy for all such Affordable Housing Units.

(d) Building Phase 4. On or before Building Threshold Date 4, CSU will cause one or more Building Permits to be issued for the construction of one hundred sixty (160) Affordable Housing Units corresponding to Building Phase 4 of the Project, such that the cumulative total of Affordable Housing Units for which a Building Permit has been issued in all of the Building Phases is four hundred sixty (460). No later than three (3) years after Building Threshold Date 4, CSU will cause a cumulative total of Affordable Housing Units that satisfies the Affordable Housing Requirement to be completed within the Project, as evidenced by CSU's issuance of a Certificate of Occupancy for all such Affordable Housing Units.

(e) Adjusted Build Out. CSU has no obligation to complete one or more Building Phases, provided that CSU must cause the Affordable Housing Requirement to be achieved with respect to the number of Dwelling Units constructed upon completion of the Project. If CSU elects not to complete one or more Building Phases, it will notify the Commission that it does not intend to construct further Dwelling Units and it will confirm that, as of the date of such notice, the Affordable Housing Requirement has been satisfied as to the Dwelling Units then existing. In addition, if the development and construction of Dwelling Units ceases on the CSU Property for more than ten (10) consecutive years prior to the completion of Building Phase 1, 2, 3 or 4, as applicable, then as of the tenth anniversary of such cessation in residential development, CSU will be required to have satisfied the Affordable Housing Requirement with respect to the number of Dwelling Units then existing.

2.3 Credit for Early Production of Affordable Housing Units. CSU will be entitled to a unit-based credit against its obligation to cause the construction of Affordable Housing Units in any subsequent Building Phase if the number of Affordable Housing Units for which CSU has caused the construction of in any earlier Building Phase exceeds the then-required overall minimum of Affordable Housing Units. For purposes of illustration only, if CSU has caused a Building Permit and Certificate of Occupancy to be issued for three hundred (300) Affordable Housing Units within Building Phase 1 of the Project, CSU will not be required to cause a Building

Permit to be issued for the construction of any additional Affordable Housing Units until Building Threshold Date 4.

2.4 Income Averaging. To maximize the viability of a successful affordable housing program at the Project, CSU may elect to provide Affordable Housing Units at a variety of affordability levels so long as (i) CSU continues to cause at least ten percent (10%) of Dwelling Units to be restricted as Affordable Housing Units and (ii) the overall average AMI restriction for all Affordable Housing Rental Units encumbered by a Development-Specific Declaration does not exceed sixty percent (60%) of AMI. CSU acknowledges that eligibility for California Tax Credit Allocation Committee (CTCAC) low income housing tax credit financing may require compliance with more restrictive income averaging rules, such as a requirement that maximum affordability levels cannot exceed 80% AMI for affordable housing developments within the Project that utilize such financing programs. CTCAC and other regulations governing income averaging are not imposed upon CSU through this Declaration. The only restriction on income averaging imposed by this Declaration is that set forth in the first sentence of this Section 2.4.

(a) Example. By way of illustration, in Building Phase 1, CSU could satisfy its Affordable Housing Unit obligations by restricting 100 Affordable Housing Rental Units as follows: 46 units at 30% AMI, 23 units at 60% AMI, 17 units at 80% AMI and 14 units at 100% AMI. The Person or household occupying each Affordable Housing Rental Unit provided at a modified AMI threshold pursuant income averaging shall be considered a "Targeted Rental Household" for purposes of this Declaration and each such Affordable Housing Rental Unit shall be encumbered by Development-Specific Regulatory Documents consistent with the intent of this Declaration. At its election in this example, CSU could also set aside more than 100 Affordable Housing Rental Units in order to achieve an average overall 60% AMI with a greater number of units occupied by households earning more than 60% AMI so long as all such units are occupied by Targeted Rental Households and encumbered by Development-Specific Regulatory Documents with appropriate modifications to account for an adjusted AMI restriction consistent with the intent of this Declaration.

(b) Cumulative Calculation for AMI Averaging. All of the Affordable Housing Units provided in prior Building Phases shall be considered in calculating the AMI average for Targeted Households within a particular Building Phase. Consequently, if CSU restricts Affordable Housing Units at deeper AMI levels in Building Phase 1, Affordable Housing Units in later Building Phases may be restricted at higher AMI levels so long as, overall and on average, the Affordable Housing Units within the Project do not exceed 60% AMI for Affordable Housing Rental Units.

2.5 Limitations on Issuance of Building Permits. Issuance of Building Permits for Affordable Housing Units corresponding to any Building Phase will not be allowed until both of the following conditions precedent are satisfied: (i) the requisite Performance Security, as described in Section 3.1, is provided; and (ii) any Affordable Housing Developer constructing Affordable Housing Units in the applicable Building Phase signs the Development-Specific Regulatory Documents, and the signed Development-Specific Regulatory Documents are recorded in the Official Records in Senior Priority against the portion of the CSU Property (including any leasehold interest in any portion of the CSU Property) on which the Affordable Housing Developer will construct the Affordable Housing Units. As described in Section 3.1, CSU will additionally

require such Affordable Housing Developer to provide performance security in an amount and form sufficient to assure the construction of Affordable Housing Units required by the Development-Specific Regulatory Documents.

2.6 Student Eligibility. CSU agrees that student dependents cannot qualify as Targeted Households eligible to rent or purchase Affordable Housing Units unless the taxpayer upon whom the student in question is dependent, resides in the same Dwelling Unit and whose income qualifies the household as a Targeted Household. CSU agrees that it will only permit students to qualify as Targeted Households able to rent or purchase Affordable Housing Units if they qualify as an independent taxpayer whose income qualifies the student's household as a Targeted Household. If the City modifies the City Affordable Housing Ordinance or if the City or the Commission adopt policies, rules or procedures in the future permitting dependent students to qualify as Targeted Households under the City's regulations ("**City Student Affordable Housing Rules**"), then CSU may permit student occupancy of Affordable Housing Units to the same extent that would be permitted by the City Student Affordable Housing Rules if those rules were applicable to CSU.

2.7 Diligent Construction. CSU will exercise commercially reasonable efforts to cause construction of all required Affordable Housing Units under this Declaration, including the insertion of appropriate language in each applicable Affordable Housing Development Contract requiring the Affordable Housing Developer to diligently commence and complete construction of its Affordable Housing Units. It is acknowledged, however, that market or other conditions may impact the pace of residential development and that CSU will not be in breach or default under this Declaration if the construction of Affordable Housing Units is delayed as a result of market conditions or other Unavoidable Delay.

2.8 Quality of Construction. The square footage and interior features of the Affordable Housing Units are not required to be equivalent to the Market Rate Units, as long as they are of good quality and are consistent with then-applicable building standards for new housing constructed under the jurisdiction of CSU.

2.9 No Discrimination. CSU will follow, and will cause each Affordable Housing Developer to follow, marketing requirements and procedures compliant with applicable fair housing laws. Neither CSU, nor any Affordable Housing Developer or its agents, shall discriminate against any renter or purchaser, or prospective renter or purchaser of any Affordable Housing Unit, on the basis of race, color, religion, sex, national origin, age, physical handicap, or the fact that a renter or purchaser has a child or children (provided that children may be excluded from student housing projects to the extent permitted by applicable Law or CSU policies).

2.10 Additional Housing Opportunity Units. Any Additional Housing Opportunity Units provided by CSU will be in addition to CSU's fulfillment of the Affordable Housing Requirement in accordance with Section 2.1 and will be counted as Market Rate Units, not Affordable Housing Units, when calculating the number of Dwelling Units constructed on the CSU Property for purposes of determining the number of required Affordable Housing Units.

2.11 Liens and Encumbrances. This Declaration shall be recorded upon the Purchase Agreement Closing in Senior Priority against the CSU Property relative to any Developer Debt Instruments. CSU shall not permit any instrument to be recorded in the Official Records against

the CSU Property that would cause CSU to be in violation of any specific provisions of this Declaration.

3. PERFORMANCE SECURITY AND REGULATORY DOCUMENTS.

3.1 Performance Security. As required by applicable Law, CSU will require Affordable Housing Developers to provide Performance Security with respect to the construction of Affordable Housing Units on the CSU Property as follows:

(a) Timing. Before a Building Permit is issued to any Affordable Housing Developer for the construction of Affordable Housing Units within the Project, CSU will require that the Affordable Housing Developer provide Performance Security for the construction of the applicable Affordable Housing Units in the form and content required by the General Contract Terms and Conditions and the Public Contract Code, and reasonably acceptable to CSU and consistent with the provisions of this Section 3.1.

(b) Form of Security. Performance Security shall be provided in the form of a payment and performance bond, deed of trust, letter of credit, or other security instrument required by the General Contract Terms and Conditions and the Public Contract Code and reasonably acceptable to CSU, made for CSU's benefit, to secure the applicable Affordable Housing Developer's obligation to construct the specific Affordable Housing Units authorized under the applicable Building Permit. Any deeds of trust provided as Performance Security shall be in addition to any Development-Specific Regulatory Document, and shall encumber the real property (or leasehold interest in real property) on which the Affordable Housing Developer will construct the Affordable Housing Units. Any encumbered real property interest shall have a then-current fair market value sufficient to provide the requisite security for the Affordable Housing Developer's performance of its obligation to construct the Affordable Housing Units. If an Affordable Housing Developer fails to timely perform its requirements under the terms of any Performance Security or any Development-Specific Regulatory Documents, CSU may, but is not obligated to, resort to the security provided under such Performance Security or such Development-Specific Regulatory Documents.

(c) Valuation of Real CSU Property Interest. If a deed of trust encumbering any real property (or leasehold interest in real property) is provided by an Affordable Housing Developer as Performance Security, CSU will reasonably determine the then-current fair market value of the applicable real property interest proposed to be provided as Performance Security, based upon information provided by the Affordable Housing Developer or, if deemed necessary by CSU, based upon an appraisal provided by the Affordable Housing Developer. Before obtaining such appraisal, the Affordable Housing Developer shall submit the name(s) and professional credentials of the proposed appraiser(s) to CSU for review and approval, which will not be unreasonably withheld.

(d) Security Amount. CSU will require Performance Security provided with respect to any Affordable Housing Units to be in an amount sufficient to ensure that the Affordable Housing Units for which a Building Permit will be issued are actually constructed and that such construction is timely completed (subject to any Unavoidable Delay).

(e) Release of Security. Performance Security will be fully and finally released or reconveyed by CSU upon completion of construction, measured by issuance of a Certificate of Occupancy, of all Affordable Housing Units secured by such Performance Security.

3.2 Development-Specific Declaration. Before a Building Permit is issued to any Affordable Housing Developer for the construction of Affordable Housing Units, the Affordable Housing Developer shall sign and deliver to CSU (or to a title company, upon the CSU's request) a Development-Specific Declaration in recordable form, to be recorded for the benefit of CSU in Senior Priority against the portion of the CSU Property (or leasehold interest in the CSU Property) on which the Affordable Housing Developer will construct the Affordable Housing Units for which the Building Permit will be issued. Each Development-Specific Declaration will include provisions memorializing all of the Affordable Housing Developer's binding commitments with respect to the applicable Affordable Housing Units, including provisions that: (i) confirm the effectiveness of the affordability restrictions for a time period of at least fifty-five (55) years from the date of issuance of a Certificate of Occupancy for Affordable Housing Rental Units; (ii) restrict the initial and continued occupancy of the Affordable Housing Units to Targeted Households only; (iii) restrict the amount of the rents to be paid by a Targeted Household with respect to each Affordable Housing Unit, reflecting the proper affordability level based on the AMI and the Annual Housing Costs of the Targeted Household; (iv) identify the total number and bedroom mix of the Affordable Housing Units; (v) provide for routine monitoring of the continued income eligibility of each occupant of an Affordable Housing Rental Unit; (vi) require payment of a reasonable initial set-up fee and occupancy monitoring fee; (vii) require the submittal to CSU of information and reports reasonably necessary to monitor and ensure compliance with the Development-Specific Declaration; (viii) adequately protect the interests of CSU in the event of any trustee sale or foreclosure under any security instrument recorded in the Official Records against the CSU Property, or any bankruptcy or insolvency event affecting the Affordable Housing Developer; (ix) set forth minimum standards for maintenance and operation of the Affordable Housing Units; (x) require the Affordable Housing Developer to defend, indemnify, and hold harmless CSU, the Commission and the City against all Claims arising from or relating to the construction, rental, or operation of the Affordable Housing Units; and (xi) include other measures and protections as may be reasonably necessary or appropriate, in CSU's reasonable discretion, to fulfill the intent of this Declaration and CSU's Affordable Housing Procedures. CSU also reserves the right to provide Affordable Housing For-Sale Units. Before commencing a program for the sale of Affordable Housing For-Sale Units, CSU, in consultation with the Commission, will develop a Development-Specific Declaration, Development-Specific Regulatory Deed of Trust, and related policies and procedures governing the sale of Affordable Housing For-Sale Units.

3.3 Development-Specific Regulatory Deed of Trust. Before a Building Permit is issued to any Affordable Housing Developer for the construction of Affordable Housing Units, the Affordable Housing Developer shall sign and deliver to CSU (or to a title company, upon CSU's request) a Development-Specific Regulatory Deed of Trust in recordable form, to be recorded in favor of CSU in Senior Priority against the portion of the CSU Property (or leasehold interest in the CSU Property) on which the Affordable Housing Developer will construct the Affordable Housing Units for which the Building Permit will be issued. The Development-Specific Regulatory Deed of Trust shall provide for its subordination to any purchase money or leasehold deeds of trust obtained by the eligible purchasers of Affordable Housing For-Sale Units (if any

such units will be included in the Affordable Housing Units) and other terms as may be reasonable negotiated by the trustor under the Development-Specific Regulatory Deed of Trust.

3.4 Specific Performance Right. Neither the City nor the Commission will be parties to any Affordable Housing Development Contract and also will not have rights under the Performance Security or the Development-Specific Regulatory Documents, but upon a Default by CSU, the City and the Commission may pursue an action for specific performance seeking to compel CSU to perform its obligations under this Declaration pursuant to Section 8.2 below.

3.5 Title Insurance. CSU may obtain, at its sole option and at the Affordable Housing Developer's sole expense, an ALTA lender's policy of title insurance in an amount reasonably determined by CSU to ensure that the Development-Specific Regulatory Documents will retain Senior Priority against the applicable real property interest relative to any Developer Debt Instruments.

3.6 Foreclosure. In the event of a foreclosure on any portion of, or leasehold interest in, the CSU Property that eliminates the encumbrance against the CSU Property of any Development-Specific Regulatory Document, this Declaration shall nevertheless continue to bind the purchaser through the foreclosure sale (or the grantee identified in a deed in lieu of foreclosure), who shall, upon five (5) Business Days written notice from CSU, sign and deliver to CSU a recordable deed of trust in form substantially the same as the Development-Specific Regulatory Document so eliminated, with any commercially reasonable modifications as may be requested by such successor owner and reasonably approved by CSU. Such deed of trust shall be recorded against the CSU Property in a lien priority comparable to the Development-Specific Regulatory Document eliminated by such foreclosure, and the new owner shall reimburse CSU for its reasonable attorneys' fees, court costs, investigative fees, and expert witness fees incurred by CSU in obtaining compliance by the new owner, including any such costs or fees arising as the result of litigation.

3.7 Partial Releases. Upon recordation of Development-Specific Regulatory Documents designating Affordable Housing Units sufficient to satisfy requirements applicable to a Building Phase, this Declaration shall be automatically terminated and released as to all Market Rate Units in that Building Phase. Though not necessary to effect a release of this Declaration, upon request by CSU, the Parties agree to record a partial release as to Dwelling Units that are not Affordable Housing Units within a Building Phase upon the recordation of Development-Specific Regulatory Documents for all Affordable Housing Units required within such Building Phase. In addition, it is acknowledged and agreed that this Declaration shall not be enforceable against or binding upon any portion of the CSU Property used for stadium, commercial, educational or recreational land uses or any other portions of the CSU Property that are not planned or used for residential purposes.

4. REPORTING AND DISCLOSURE OF DOCUMENTS.

4.1 Housing Status Reports. Until CSU has fully satisfied the Affordable Housing Requirement and the Affordable Housing Phasing Plan by completing construction of all Dwelling Units, CSU will, on or before each January 30, prepare and submit to the Commission a Housing Status Report, in a form reasonably acceptable to the CSU and the Commission, containing all

pertinent information. Notwithstanding the foregoing, if CSU elects not to complete all Building Phases, CSU's obligation to deliver a Housing Status Report will terminate at the time that CSU informs the Commission in writing that it has completed residential development of the Project. CSU will include detailed information in the Housing Status Report regarding: (i) the intended on-site location, timing and affordability levels of all Affordable Housing Units to be constructed on the CSU Property, to the extent then-known; and (ii) the intended on-site location and timing of any Additional Housing Opportunity Units to be constructed on the CSU Property. Upon request, CSU will also provide the Commission with copies of any Development-Specific Regulatory Documents executed by Affordable Housing Developers. The Development-Specific Declaration will require Affordable Housing Developers to provide periodic monitoring reports confirming that Affordable Housing Units are being occupied in compliance with the Development-Specific Declaration, which reports CSU will share with the Commission upon request.

4.2 Disclosure of Documents. Within thirty (30) days after receipt of a written request from the Commission, which request shall not be made more than quarterly, CSU shall provide the City with a copy of any Building Permits, any Certificates of Occupancy, any approved, signed contracts with respect to the construction of Dwelling Units, including Affordable Housing Development Contracts, or other documents or information as may be reasonably necessary to substantiate CSU's compliance with any provisions of this Declaration.

5. POTENTIAL CONFLICTS BETWEEN DOCUMENTS. This Declaration will be recorded in the Official Records at substantially the same time as other agreements and documents signed by the Parties in connection with the Purchase Agreement Closing. If any direct conflict exists between this Declaration and any other agreement or document signed by the Parties and recorded in the Official Records in connection with the Purchase Agreement Closing, then this Declaration shall be controlling to the extent that this Declaration describes the construction, occupancy, rental, use, or operation of any Affordable Housing Units on the CSU Property as part of the Project. If any direct conflict exists between this Declaration and the Declaration of Property Development Restrictions and Permitting, then this Declaration shall be controlling with respect to the Affordable Housing Units within the Project. However, varying degrees of stringency shall not be deemed direct conflicts, and the most stringent requirement shall control.

6. COVENANTS RUN WITH THE LAND. Subject to the limitations described in Section 3.6, Section 3.7 and the right to release non-residential portions of the CSU Property from this Declaration as described in Section 22, all covenants, conditions, restrictions, reservations, and agreements set forth in this Declaration shall be deemed covenants running with the land of the CSU Property, binding upon each successor-in-interest of CSU in the Project or the CSU Property (including leasehold estates and other estates or interests in the CSU Property), including each Affordable Housing Developer. Regardless of classification or characterization, each of the covenants, conditions, restrictions, and agreements contained in this Declaration touch and concern the land of the CSU Property (subject to the limitations described in Section 3.6, Section 3.7 and the right to release non-residential portions of the CSU Property from this Declaration as described in Section 22), and each of them is expressly declared to be for the benefit and in favor of the land or interest in land to which such covenants, conditions, restrictions, or agreements relate. CSU assumes the duty and obligation to perform each of the agreements and covenants and to honor each of the reservations and restrictions set forth in this Declaration. Each and every contract, deed, or other instrument transferring any estate or interest in the CSU Property or the

Project shall conclusively be deemed to have been signed, delivered, and accepted subject to the agreements, covenants, conditions, reservations, and restrictions of this Declaration, regardless of whether such agreements, covenants, conditions, reservations, and restrictions are set forth in or referenced in such contract, deed, or other instrument.

7. **DEFAULTS.** A Party shall be in “**Default**” of this Declaration if it fails to comply with any covenant or perform any obligation required hereunder and such failure is not cured within sixty (60) days after the delivery of written notice describing such failure by the other Party, provided that if such Default cannot reasonably be cured within such sixty (60) day period and the defaulting Party commences to cure such Default within such sixty (60) day period and thereafter diligently and expeditiously proceeds to cure the same, the defaulting Party shall be afforded an additional sixty (60) days to cure a Default.

8. **REMEDIES.** Subject to the express notice and opportunity to cure provisions of this Declaration regarding a specific Default, the City and the Commission shall have the following remedies regarding any Default by CSU:

8.1 Recovery of In-Lieu Fees. If CSU’s Default is the failure to produce Affordable Housing Units on the CSU Property in compliance with the terms of this Declaration, then the City or Commission may elect, in its sole and absolute discretion, to pursue the following remedy: (i) the City or Commission will calculate the exact amount of the “Inclusionary Affordable Housing Fee” in accordance with San Diego Municipal Code section 142.1304 (“**Inclusionary Affordable Housing Fee**”) that is payable as of the date on which the City discovered CSU’s noncompliance; (ii) the City or Commission will deliver written notice to CSU identifying the exact amount of the Inclusionary Affordable Housing Fee owed by CSU as a result of its Default; (iii) within thirty (30) days after CSU’s receipt of such written notice, CSU shall fully pay to the City, the Inclusionary Affordable Housing Fee; and (iv) the City shall deposit CSU’s payment into the San Diego Affordable Housing Fund described in Municipal Code section 98.0502. If either the City or the Commission elects to require payment of the Inclusionary Affordable Housing Fee for CSU’s Default with respect to the production of Affordable Housing Units, such election of remedies shall be binding as the sole and exclusive remedy of both the City and the Commission and neither shall pursue any further remedy against CSU under Section 8.2, Section 9 or otherwise.

8.2 Other Relief. Subject to the express notice and opportunity to cure provisions of this Declaration regarding a specific Default, upon the occurrence of any Default by a Party under this Declaration, the non-defaulting Party may seek a court order that provides declaratory or injunctive relief to address the Default or pursue any other available legal or equitable remedy, unless the City or the Commission has pursued the remedy described in Section 8.1. If the City or the Commission pursue the remedy described in Section 8.1, that shall be the City and Commission’s sole and exclusive remedy for a Default with respect to the Affordable Housing Requirement. Notwithstanding anything to the contrary set forth herein, neither Party shall be entitled under any circumstances to recover any speculative, consequential or punitive damages from the other Party.

9. **STANDING AND EQUITABLE REMEDIES.** The City and the Commission, or their successors (if any), shall be the proper parties and shall have standing to initiate and pursue any actions or proceedings, at law or in equity, to enforce the provisions of this Declaration or recover

damages for any Default pursuant to Article 8 of this Declaration. CSU, any Affordable Housing Developer, and any tenant or occupant of any Affordable Housing Unit on the CSU Property shall not have any claim or right of action against the City or the Commission based on any alleged failure of the City or the Commission to perform or enforce the terms of this Declaration.

10. NO VARIANCE OR WAIVER REQUIRED. San Diego Municipal Code section 22.0908(l) requires the City to ensure that the sale and ultimate development of the CSU Property complies with the City's "affordable housing requirements." Through this Declaration requiring CSU to comply with the Affordable Housing Requirement and the other terms set forth herein, the City ensures that CSU will comply with the City's "affordable housing requirements," consistent with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G. Neither Section 22.0908 of the San Diego Municipal Code nor any other section of Measure G requires compliance with the City's ordinances, resolutions, regulations, policies or other rules relating to affordable housing and, to the contrary, Section 22.0908(x)(12) of the San Diego Municipal Code states expressly that "Nothing in [Measure G] abrogates or is intended to abrogate, the authority of the Board of Trustees of the California State University." In light of the foregoing, the Parties agree that CSU is not subject to the City Affordable Housing Ordinance or any other affordable housing regulations adopted by the City. Therefore, no variance or waiver pursuant to San Diego Municipal Code section 142.1307, or any other City regulation, is required to the extent any terms of this Declaration conflict with the City Affordable Housing Ordinance. Nevertheless, to the extent it is determined that Measure G or Section 22.0908 of the Municipal Code requires compliance with the City's Affordable Housing Ordinance, by approving the sale of the CSU Property to CSU and authorizing the Mayor to execute the Purchase Agreement, to which the form of this Declaration is an attachment, the City Council finds that the City Affordable Housing Ordinance is not applicable to CSU's development of the Project.

11. NO LIMITATION ON CSU AUTHORITY. Nothing in this Declaration shall be deemed to limit, modify, or abridge or affect in any manner whatsoever, the governmental police power or other legal authority (whether direct or delegated) of CSU under applicable Law regarding the CSU Property or the Project.

12. INDEMNITY OBLIGATIONS. CSU shall defend, indemnify, and hold harmless the City Parties and the Commission Parties from and against any and all Claims related to this Declaration, the CSU Property, or the Project to the extent any such Claim arises from or relates to: (a) the construction, rental, use, monitoring, or administration of any Affordable Housing Units; (b) any agreements or other arrangements that CSU (or anyone claiming by or through CSU) makes with a third person regarding the Affordable Housing Units; or (c) any failure by CSU to provide, or cause to be provided, the Affordable Housing Units in the Project, or any alleged failure on the part of the City or the Housing Commission to require the provision of Affordable Housing Units in compliance with applicable Law. CSU's obligation to indemnify and defend the City Parties and the Commission Parties pursuant to this Declaration shall survive the expiration or termination of this Declaration, until any and all actual or prospective Claims regarding any matter subject to such obligation are fully, finally, and completely barred by applicable statutes of limitations. Notwithstanding the foregoing, the CSU's indemnification obligations shall not apply to Claims arising out of the active negligence, sole negligence or sole willful misconduct of the City Parties or the Commission Parties (as applicable). The City and the Commission shall notify CSU in writing within five (5) Business Days of the receipt of any notice of any Claims provided

that the failure to notify CSU in writing within such five (5) Business Day period shall not release CSU from the indemnification obligation set forth in this Section. Upon receipt of such notification, CSU shall assume the defense of the Claims, including the employment of counsel reasonably satisfactory to the City, the Commission and CSU. CSU shall notify the City Parties and the Commission Parties of CSU's desired legal counsel, in writing within five (5) Business Days after CSU's receipt of the City's or the Commission's written notice of a Claim. The City Parties and the Commission Parties shall thereafter have five (5) Business Days within which to approve or disapprove CSU's choice of counsel, and if the City Parties and the Commission Parties fail to respond in writing within such time period, they shall be deemed to have approved CSU's choice of counsel. The City Parties and Commission Parties' approval of CSU's choice of counsel shall not be unreasonably withheld, conditioned or delayed.

13. ESTOPPEL CERTIFICATES. Each Party shall from time to time, within fifteen (15) business days after receipt of written request from the other Party, execute, acknowledge and deliver a statement in customary form (i) certifying that this Declaration is unmodified (whether by formal waiver, amendment, or otherwise) and in full force and effect or, if modified, stating the nature of such modification and certifying that this Declaration as so modified is in full force and effect (or, if this Declaration is claimed not to be in force and effect, specifying the grounds therefor), (ii) acknowledging that there are not, to the knowledge of the certifying Party, any uncured Defaults on the part of any other Party hereunder (or specifying such Defaults if any are claimed), and (iii) certifying such other matters as the requesting Party or its respective current or prospective development partners, mortgagees, insurance carriers, auditors, and/or potential purchasers or lessees may reasonably request. Any such statement may be relied upon by third parties receiving the same. The failure to timely deliver a statement shall constitute a conclusive presumption that this Declaration is in full force and effect without modification except as may be represented by the requesting Party and that there are no uncured Defaults in the performance of the requesting Party, except as may be represented by the requesting Party.

14. MORTGAGEE PROTECTION. If any fee or ground leasehold interest of any portion of the CSU Property is encumbered by any financing lien or any other mortgage or deed of trust (each, a "**Security Instrument**", and the lender or other secured parties and/or beneficiaries thereunder, each a "**Secured Party**"), the City and Commission hereby agrees as follows:

14.1 Provided that the City and the Commission receive written request from a Secured Party to receive copies of any notice of Default delivered by the City or the Commission under this Declaration, together with the Secured Party's current and accurate address, then the City and Commission will give to each such Secured Party, at the Secured Party's address provided to the City and the Commission in writing, a copy of each notice of Default at the same time as it gives a notice of Default to the defaulting party ("**Defaulting Party**"). The failure of a Secured Party to receive a copy of such notice of Default from the City or the Commission shall not constitute a Default of the City or the Commission under this Declaration.

14.2 Any Secured Party shall have the right, but not the duty, to cure any such Default and otherwise perform any other act and/or make any payment required of the Defaulting Party under this Declaration, within thirty (30) days after the expiration of the applicable cure period provided to the Defaulting Party under this Declaration. All acts performed and/or payments made by Secured Party within such cure period shall be as effective to cure any Default to the same

extent as if made and performed by the Defaulting Party. If any non-monetary Default under this Declaration is such that possession of that portion, whether fee ownership or a ground leasehold interest, of the CSU Property which is encumbered by the applicable Security Instrument (the "**Subject Portion of the Property**") may be necessary to remedy the Default, Secured Party shall have a reasonable time period but not to exceed one hundred twenty (120) calendar days from the expiration of the cure period provided to the Defaulting Party under this Declaration within which to remedy such Default, provided that (i) Secured Party commences such cure within thirty (30) days after expiration of the cure period provided to the Defaulting Party under this Declaration and thereafter diligently pursues such cure to completion, (ii) Secured Party shall have fully cured any monetary Default within thirty (30) days after the expiration of the applicable cure period provided to the Defaulting Party under this Declaration and shall have continued to timely pay all monetary obligations of the Defaulting Party under this Declaration as and when the same are due and all monetary obligations of the Defaulting Party with respect to the Subject Portion of the Property, until completion of the cure, and (iii) Secured Party shall have performed all other obligations of the Defaulting Party under this Declaration and all other obligations of the Defaulting Party with respect to the Subject Portion of the Property, to the extent that they are susceptible of being performed by Secured Party, until completion of the cure.

14.3 Upon the occurrence of a Default under the Security Instrument, the City and the Commission acknowledge that Secured Party may acquire the Subject Portion of the Property by completion of a foreclosure of the Security Instrument or by deed in lieu of foreclosure or otherwise. This Declaration shall survive any such acquisition of the Subject Portion of the Property by Secured Party, but Secured Party shall have no liability or obligation with respect to performance of those obligations of the Defaulting Party under this Declaration arising prior to Secured Party's actual acquisition of the Subject Portion of the Property. Following Secured Party's acquisition of the Subject Portion of the Property, upon the City's or the Commission's written request, Secured Party shall agree to assume those obligations of the Defaulting Party under this Declaration arising from and after the date of such acquisition by Secured Party, by execution of an assignment and assumption agreement in form and content reasonably acceptable to the City, the Commission and the Secured Party.

14.4 The breach by the Defaulting Party of any of its obligations under this Declaration, and the exercise of the City's or the Commission's remedies with respect to any such breach by the Defaulting Party, shall not defeat or render invalid the lien of any Security Instrument.

14.5 The City and Commission shall, at no cost to the City or Commission, execute such additional commercially reasonable terms and conditions as may be requested in writing by any Secured Party in order to clarify or supplement the foregoing mortgagee protection provisions.

15. GOVERNING LAW. The substantive and procedural laws of the State shall govern the interpretation and enforcement of this Declaration, without application of statutes or principles relating to conflicts of laws.

16. NON-LIABILITY OF OFFICIALS AND EMPLOYEES. No elected official, officer, contractor, consultant, attorney, employee, or agent of the City or the Commission shall be personally liable to CSU or any Affordable Housing Developer, any voluntary or involuntary successor or assign of CSU or any Affordable Housing Developer, or any lender or other Person

holding an interest in CSU, any Affordable Housing Developer, the CSU Property, or the Project, in the event of any breach of this Declaration by the City or the Commission, or for any amount that may become due to CSU, any Affordable Housing Developer, or their respective successors or assigns from the City or the Commission under this Declaration, or on any obligations arising under this Declaration. Likewise, no elected official, officer, contractor, consultant, attorney, employee, or agent of CSU shall be personally liable to the City or the Commission, or any voluntary or involuntary successor or assign of the City or the Commission, in the event of any breach of this Declaration by CSU, or for any amount that may become due to the City or the Commission or their respective successors or assigns from CSU under this Declaration, or on any obligations arising under this Declaration.

17. NOTICES.

17.1 Delivery. Any and all notices and communications pursuant to or as required by this Declaration must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address below; or (iv) electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from a named recipient representing CSU in response to a notice email). Any notice shall be deemed received by the addressee, on the Business Day that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or two (2) Business Days after the notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a party may give any notice on behalf of such party and may confirm on behalf of such party that delivery of a hard copy is waived with respect to any notices or communications delivered via email.

17.2 Addresses. The notice addresses for the Parties, as of the Effective Date, are as follows:

To City:

City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Cybele Thompson, Director, Real Estate Assets Dept.
email: thompsonc@sandiego.gov

With a copy to:

San Diego City Attorney's Office
1200 Third Avenue, Suite 1100
San Diego, CA 92101

Attn: Kevin Reisch, Esq., Senior Chief Deputy City Attorney
email: [kreisch@sandiego.gov](mailto:kreich@sandiego.gov)

To Commission:

San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, CA 92101
Attn: Jeff Davis, Executive Vice-President & Chief of Staff
email: jeffd@sdhc.org

with a copy to:

Christensen & Spath LLP
550 West C Street, Suite 1660
San Diego, CA 92101
Attn: Charles Christensen
email: CBC@candslaw.net; or,

Attention: Walter F. Spath, III
e-mail: WFS@candslaw.net

To CSU:

The Board of Trustees of the California State University
401 Golden Shore, 5th Floor
Long Beach, CA 90802-4210
Attn: Steve Relyea, Executive Vice Chancellor and Chief Financial Officer
email: srelyea@calstate.edu

with a copy to:

Office of the President
San Diego State University
5500 Campanile Drive
San Diego, CA 92182-8000
Attn: Adela de la Torre, President
email: presoffi@sdsu.edu

and to:

G. Andrew Jones, Executive Vice Chancellor and General Counsel
The California State University
Office of General Counsel
401 Golden Shore
Long Beach, CA 90802-4210
email: gajones@calstate.edu

and to:

Sheppard Mullin Richter & Hampton LLP
12275 El Camino Real, Suite 200
San Diego, CA 92130
Attn: Domenic C. Drago, Esq.
email: ddrago@sheppardmullin.com

Each Party shall promptly deliver written notice to the other Parties regarding any change in such Party's notice address.

18. JURISDICTION AND VENUE. This Declaration is entered into and is to be fully performed in the City of San Diego, County of San Diego, State of California, and all legal actions arising from this Declaration shall be filed in San Diego County Superior Court or the United States District Court with jurisdiction in the County of San Diego, California.

19. PRINCIPLES OF INTERPRETATION. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Declaration. The Parties have each participated substantially in the negotiation, drafting, and revision of this Declaration, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Declaration may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which govern all language in this Declaration. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each collective noun in this Declaration shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference in this Declaration to any document, including this Declaration, refers to such document as modified from time to time (excepting any modification that violates this Declaration or where the context of this Declaration clearly dictates otherwise), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" includes the word "and," except where the context clearly requires otherwise. The word "shall" has the same meaning as the word "must" and denotes a mandatory action. The word "may" denotes a permissive action. Every reference in this Declaration to a law, statute, regulation, order, form, or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

20. COUNTERPART ORIGINALS; INTEGRATION. This Declaration may be signed in multiple counterpart originals, each of which is deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Declaration, the exhibits attached to this Declaration, and the documents referenced in this Declaration represent the entire understanding of the Parties and supersede all previous negotiations, letters of intent, memoranda of understanding, or agreements between the Parties with respect to all or any part of the subject matter of this Declaration.

21. SEVERABILITY. If any term or provision of this Declaration or application of any term or provision of this Declaration to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Declaration or the application of such term or provision to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity or unenforceability. All remaining terms

and provisions of this Declaration shall be valid and shall be enforced to the fullest extent allowed by Law.

22. AMENDMENTS. This Declaration may be amended only upon the approval and signature of all Parties. Any amendment to this Declaration that is signed by one Party, but not the other Parties, shall be null and void and of no force or effect whatsoever. If the CSU Property is subdivided in the future, upon request by either Party, the Parties shall record an amendment to this Declaration partially releasing subdivided portions of the CSU Property that are improved or designated for improvement with uses for anything other than residential purposes. Any such amendment to this Declaration may be executed by the City's Mayor or its designee without obtaining prior City Council approval and by the Commission's President and Chief Executive Officer or his or her designee without obtaining prior Commission approval. Without limiting the foregoing rights to amend this Declaration, the Parties hereby acknowledge and agree that (i) in furtherance of the development of the Project, CSU currently intends to record a subdivision map for the CSU Property which will subdivide the CSU Property into various separate legal parcels, (ii) nothing in this Declaration shall be construed as granting the City or the Commission any right to approve any such subdivision map and/or the legal parcels created thereby, (iii) this Declaration shall only apply to residential uses, and thus, after a subdivision map is recorded, such provisions will not be applicable to portions of the CSU Property that are not designated specifically for residential uses, and (iv) at such time, without need for City or Commission consent or approval, in addition to such subdivision map and all matters contained therein, CSU shall be allowed, in its sole discretion, to record against title to the CSU Property one or more instruments which specifically identify which legal parcels created by the subdivision map containing or planned to contain non-residential uses that are not bound by the terms of this Declaration.

23. LEGAL COSTS. If a Party commences any action or proceeding seeking to interpret, enforce, reform, or rescind this Declaration or any provision of this Declaration, the prevailing Party (as determined by the court or arbiter in a final decision) shall be entitled to receive payment of its Legal Costs from the other Party. This Section 23 shall survive the expiration or termination of this Declaration.

24. NO WAIVER. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants, conditions, restrictions, or agreements contained in this Declaration shall not be deemed a waiver of such term, covenant, condition, restriction, or agreement. Any waiver or relinquishment of any rights or powers under this Declaration at any one time or more times shall not be deemed a waiver or relinquishment of such right or power at any other time or times.

25. TIME IS OF THE ESSENCE. Time is of the essence in the performance of the obligations under this Declaration.

26. UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE. Except as otherwise expressly set forth in this Declaration, performance under this Declaration shall not be deemed or considered to be in Default, where such Default is due to an Unavoidable Delay.

27. NO INTENDED BENEFICIARIES. The performance of the Parties' respective obligations under this Declaration are not intended to benefit any Person other than the City, the Commission, and CSU, except as may be expressly provided otherwise in this Declaration. No

Person other than a signatory to this Declaration shall have any rights or causes of action against any CSU as a result of its performance or non-performance under this Declaration, except as otherwise expressly provided in this Declaration.

28. NO OTHER REPRESENTATIONS OR WARRANTIES. Except as expressly set forth in this Declaration, neither Party makes any representation or warranty to the other Party that is material to this Declaration.

29. RELATIONSHIP OF PARTIES. Each of the Parties is an independent contracting entity. Nothing in this Declaration shall create any partnership, joint venture, or similar business arrangement, relationship, or association between the Parties.

30. SURVIVAL OF DECLARATION. All provisions of this Declaration shall be applicable to any dispute between the Parties arising from this Declaration, whether prior to or following expiration or termination of this Declaration, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable limitations periods.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, a duly authorized representative of each Party has signed this Declaration, to be effective as of the Effective Date.

CITY:

City of San Diego, a California municipal corporation

Date: _____

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

MARA W. ELLIOTT, City Attorney

By:

Kevin Reisch
Senior Chief Deputy City Attorney

COMMISSION:

San Diego Housing Commission, a public agency

Date: _____

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Christenson & Spath, LLP,
Commission General Counsel

By:

Charles Christenson, Esq.

IN WITNESS WHEREOF, a duly authorized representative of each Party has signed this Declaration, to be effective as of the Effective Date.

CSU:

Date: _____

The Board of Trustees of the California State University, the State of California acting in its higher education capacity, on behalf of San Diego State University

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

SHEPPARD MULLIN RICHTER &
HAMPTON, LLP

By: _____

Domenic C. Drago, Counsel for The Board of Trustees of the California State University, which is the State of California acting in its higher education capacity on behalf of San Diego State University

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)

COUNTY OF)

On _____ (date), before me, _____
(name and title of notary public), personally appeared _____

(name of signer), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A TO DECLARATION

Legal Description of the CSU Property

ATTACHMENT 23 TO PURCHASE AND SALE AGREEMENT

Additional Public Benefits

Additional Public Benefits. The items described in the two tables below collectively constitute the “Additional Public Benefits,” as that term is used in the Agreement.

CSU will provide the public benefits and Project elements identified below as part of CSU’s development and operation of the Project. This list was prepared as part of a collaborative effort based on input from and engagement with environmental interest groups and the local community, and reflects matters that go above and beyond those benefits and components specifically described in Measure G, including Section 22.0908.

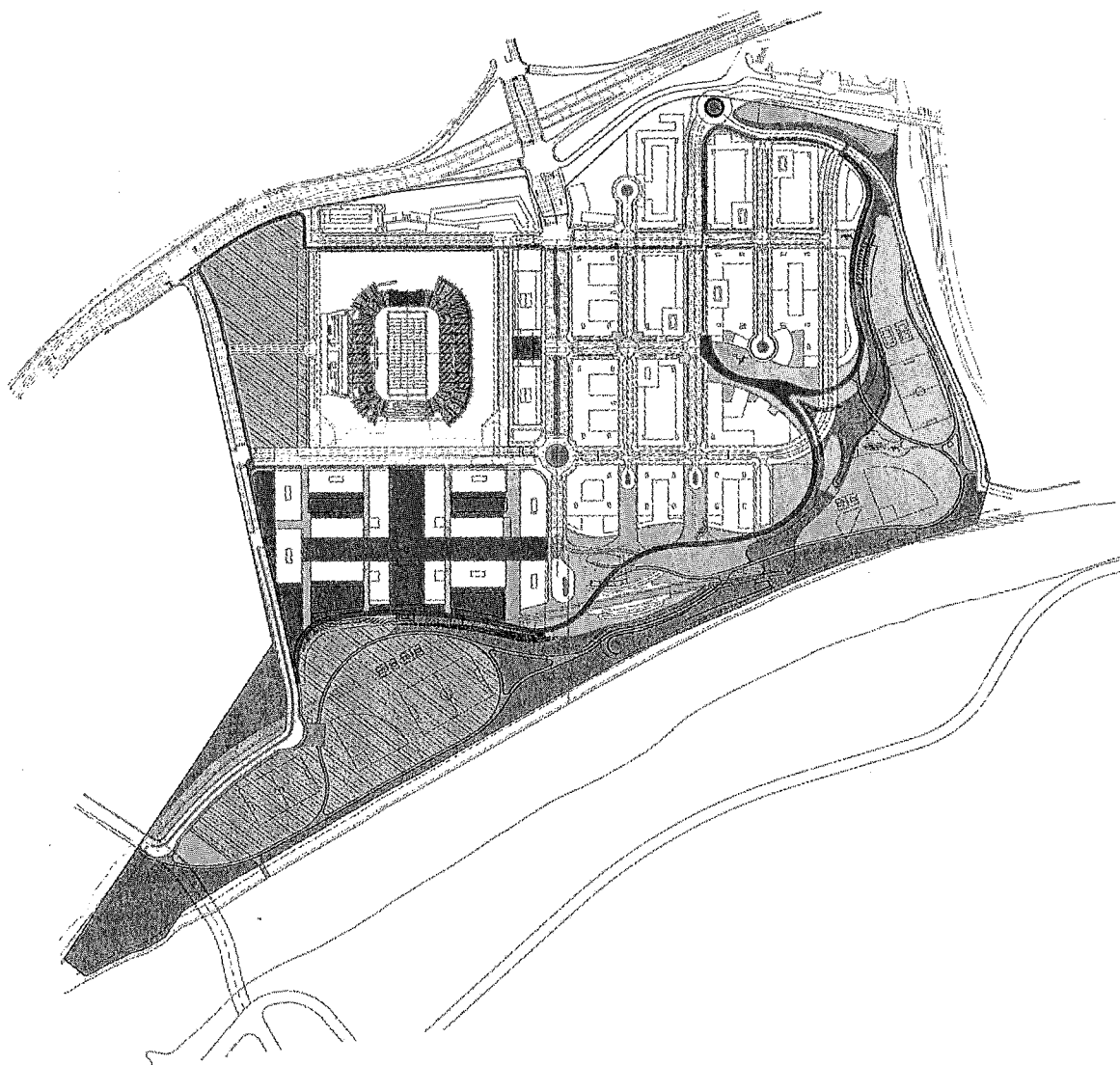
Additional SDSU Commitments	Corresponding Document
Build a world-class university research and innovation campus	Campus Masterplan
Build* and maintain the River Park <i>*also referenced in SDMC 22.0908</i>	PSA/Campus Masterplan/Campus Guidelines
*Build a multi-use stadium for Aztec football and other potential sports partners <i>*also referenced in SDMC 22.0908</i>	PSA/Campus Masterplan
Build affordable (on-site), accessible, and market rate housing for students, faculty, staff and the general public interested in residing in proximity to a vibrant university village atmosphere	PSA/Campus Masterplan
LEED Silver equivalent or better on entire project	EIR/Campus Masterplan/Campus Guidelines
*Pay Fair Market Value for the land <i>*also referenced in SDMC 22.0908</i>	PSA
*Follow the transparent and public California Environmental Quality Act (CEQA) process <i>*also referenced in SDMC 22.0908</i>	PSA/EIR

Below reflect undertakings discussed with various environmental organizations and representatives as to the specific Environmental Design Features to be included in the SDSU Mission Valley project. Each of these features is reflected in the Environmental Impact Report or the Campus Masterplan/Campus Guidelines document.

Environmental Design Features	Corresponding Document
1. The Master Plan will be a Neighborhood Development Plan which will be LEED Version 4 Silver or better.	EIR
2. The Stadium will be LEED Version 4 Silver or Better.	EIR
3. LEED Version 4 Silver will be required of all developers on the SDSU Mission Valley campus and related property at the Stadium site.	EIR
4. The CEQA applicant will be San Diego State University and the certifying agency will be the California Board of Trustees.	EIR
5. The applicant will be required to discuss and negotiate with all state and local agencies with jurisdiction to ensure the project complies with CEQA.	EIR
6. Consultation will occur with the San Diego Management and Monitoring Program staff scientists (or USGS as backup) regarding vegetation materials at bio-swales currently delineated on the attached illustration dated October 24, 2018 to maximize habitat and bio-filtration.	EIR
7. Bio-retention basins will be designed to create and increase biological habitat and treat and direct storm water.	EIR
8. The upper slopes of the bio-retention basins will be planted with appropriate native shrubs and trees to encourage biological habitat and the lower basins will be planted with plant materials that support habitat while maximizing and maintaining bio-filtration. Invasive plants will not be utilized.	EIR
9. Research and apply best practices for bird safe windows on the campus with a focus on the first two stories of the buildings directly facing the river and any buildings on open corridors.	EIR
10. Design guidelines will be established for architectural, park and ecological design elements of the project. A governance and enforcement process will be established.	EIR/Campus Masterplan/Campus Guidelines

Environmental Design Features	Corresponding Document
11. All lighting of recreation fields will follow current San Diego River guidelines.	EIR
12. To the maximum extent feasible, trails through the bioswale area shall be elevated.	EIR
13. SDSU commits to having at least 80 acres of "Project Open Space" (open to all members of the public) as described in the attached illustration dated October 24, 2018. By way of clarification, the illustration currently calls for 89.49 acres of Project Open Space.	EIR
14. SDSU will ensure that the park areas adjacent to the River on the attached illustration dated October 24, 2018 (approximately 42 acres) will be completed before the completion of the vertical construction of any building structures within the Project other than the Joint Use Stadium and its ancillary facilities.	PSA/EIR/Campus Masterplan/Campus Guidelines
15. To the degree feasible and acknowledging that existing Murphy Canyon Creek storm water and infrastructure cannot be moved, the Murphy Canyon Creek corridor shall be enhanced to increase the ecological function of the creek buffer.	EIR/Campus Masterplan/Campus Guidelines

Project Open Space Illustration (Dated October 24, 2018)



ATTACHMENT 24 TO PURCHASE AND SALE AGREEMENT

Future Recreation Center Site Agreement

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Cybele Thompson,
Director, Real Estate Assets Dept.

Space above line for Recorder's use only

Exempt from Recording Fees per Cal. Govt. Code § 27383
Exempt from Documentary Transfer Tax per Cal. Govt. Code § 11922

**AGREEMENT REGARDING RESERVATION OF
FUTURE RECREATION CENTER SITE**

This Agreement Regarding Reservation of Future Recreation Center Site ("**Agreement**") is entered into as of _____, 2020 ("**Effective Date**"), by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and the BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, the State of California acting in its higher education capacity, on behalf of San Diego State University ("**CSU**").

RECITALS

City and CSU (collectively, the "**Parties**," and individually, a "**Party**") enter into this Agreement with reference to the following facts:

A. The City's voters approved a citizens' initiative measure, commonly known as Measure G, on November 6, 2018. A portion of Measure G is codified in San Diego Municipal Code section 22.0908. Pursuant to Measure G and San Diego Municipal Code section 22.0908, the Parties entered into the Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 2020 ("**Purchase Agreement**"). As of the Effective Date of this Agreement, the closing of the transaction has occurred under the Purchase Agreement, by which CSU has acquired from the City fee title ownership of approximately 135.12 acres of real property, which includes both the real property commonly known as the San Diego County Credit Union stadium site and the contiguous real property commonly known as the Murphy Canyon Creek Channel in the Mission Valley Community Plan Area of the City ("**Property**") as more specifically described in **Exhibit A: Legal Description of Property**.

B. Pursuant to the Purchase Agreement, CSU agreed to reserve an approximately one-acre site on the Property in the location shown on the attached **Exhibit B: Depiction of**

Property with Future Site Identified, upon which the City may construct and operate an aquatics center or other recreation center ("**Recreation Center**") for general public use in the future ("**Future Site**").

C. The Parties intend for this Agreement to memorialize City's right to exercise an option to lease the Future Site for the purposes of building the Recreation Center, the maintenance and allowed uses of the Future Site by CSU during the Option Period (as defined in Section 2 of this Agreement), and the condition of the Future Site upon leasing to City for a recreation center.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Term. This Agreement shall be effective upon the Effective Date and shall continue in effect until the earlier of the date that City and CSU enter into a binding ground lease ("**Lease**") for the Future Site or the expiration of the Option Period ("**Term**"), at which time this Agreement shall automatically terminate without any additional action required by either Party; provided that upon request by CSU, City shall execute and deliver to CSU such reasonable documentation as may be required to eliminate any cloud on title to the Property created by virtue of this Agreement.

2. City's Right to Lease Future Site and Construct Facilities. City shall have the right, throughout the period of twenty (20) years from the Closing Date (as that term is defined in the Purchase Agreement) of the transaction for CSU's acquisition of the Property that occurred under the Purchase Agreement ("**Option Period**"), to enter into the Lease with CSU for the Future Site. At any time not later than six (6) months prior to expiration of the Option Period, City may notify CSU in writing of City's election to enter into the Lease for the Future Site for construction and operation of the Recreation Center ("**Election Notice**"). Within thirty (30) days after CSU's receipt of the Election Notice, the Parties shall commence good faith negotiations of the Lease for the Future Site, which shall provide for, among other things, the terms set forth in **Exhibit C: Lease Terms** attached hereto.

3. Construction and Permitting. If City makes the Election Notice and the City and CSU enter into the Lease for the Future Site, then City shall construct all facilities on the Future Site in compliance with the terms of the Lease and all applicable laws and regulations and in a manner that allows CSU to develop the site as contemplated in the San Diego State University Mission Valley Campus Master Plan without extraordinary construction means and methods and minimizes disruption to residents, tenants, guests, students, occupants, licensees, and users of CSU's development project on the Property to the maximum extent possible. The City will issue building and related permits with respect to the Recreation Center. The Lease will include a conceptual site plan for the Recreation Center approved by CSU and will require that the Recreation Center (i) comply with all applicable law, including the California Building Code, Health & Safety Code, Fire Code, Americans with Disabilities Act and the California Environmental Quality Act, including compliance with any mitigation measures adopted with the final environmental impact report for CSU's development project on the Property; (ii) be

constructed with an architectural style that is compatible with improvements constructed on or planned for construction on the Property; (iii) allow for adequate spacing between the adjacent buildings and (iv) be consistent with the campus design guidelines for CSU's development project on the Property ("**Ground Lease Requirements**"). Before the City issues a building permit, construction permit or commences any construction activity for the Recreation Center, the City will submit to CSU for review and comment, a copy of design and construction plans for the Recreation Center ("**Future Recreation Center Plans**"). The City will make a good faith effort to incorporate all comments received from CSU on the Future Recreation Center Plans. The City will provide a written explanation to CSU if any of its comments are not incorporated, but further consultation will not be required before the City may proceed with issuance of a building or other construction permit, so long as construction is performed in compliance with the Ground Lease Requirements. The City and CSU will cooperate with each other to ensure the reasonable compatibility of the Recreation Center with CSU's development project on the Property and to satisfy the City's reasonable logistical needs for design, construction, operation, and maintenance of the Recreation Center, as well as regular public access to and from all completed facilities.

4. Use. At all times prior to CSU's receipt of the Election Notice, CSU will have the right to use the Future Site in accordance with all applicable laws and regulations.

5. Condition of Future Site. Except as specifically provided below in this Section, the Future Site will be delivered by CSU to the City on the commencement date of the Lease in its "as-is" condition on the commencement date of the Lease and the Lease will contain "as-is" and general release provisions similar to those in favor of the City in the Purchase Agreement. CSU makes no, and disclaims all, representations or warranties regarding the condition or suitability of the Future Site for the City's intended use and assumes no obligation to alter or improve the Future Site. The City shall rely solely on its own independent investigations of the condition and suitability of the Future Site, and shall satisfy itself with the condition thereof. The City shall not hold CSU responsible for any defects, whether apparent or latent, in the Future Site, including the presence of any hazardous substances (to be defined in the Lease). Notwithstanding the foregoing, CSU, in connection with its development of the portions of the Property adjacent to the Future Site, will cause the Future Site to be improved such that it is at an elevation that is outside the 100-year flood level. CSU makes no representation, warranty or guaranty that the Future Site will continue to be outside the 100-year flood level on the date that the City delivers an Election Notice or at any time thereafter and shall have no responsibility for the implementation of any flood control measures or improvements that may be necessary if the 100-year flood level changes in the future. If City elects to lease the Future Site as set forth in Section 2, above, CSU shall, before the commencement of the City's Lease of the Future Site, remove from the Future Site any and all above ground (but not utility or other facilities underground) improvements, structures, installations, or additions CSU constructed or installed on the Future Site throughout the Term but shall not be required to re-grade or otherwise prepare the Future Site for construction of any improvements. CSU shall maintain the Future Site in a manner consistent with other park areas on the Property maintained by CSU until the earlier of the commencement date of the Lease or the expiration of the Option Period.

6. Compliance with Laws. CSU shall comply with all applicable laws and regulations with respect to the development, construction, use, operation, maintenance, and repair of the Future Site throughout the Term.

7. Indemnity. CSU shall defend, indemnify, and hold harmless the City and its officers, agents, departments, officials, and employees (collectively, "**Indemnified Parties**") from and against any claim, loss, cost, damage, expense, liability, lien, legal proceeding, enforcement action, administrative action or proceeding, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, notice of violation, fine, or penalty of any kind (including reasonable expert fees and expenses), and all financial or performance obligations arising from any judgment, decree, order, or other written decision issued by any governmental representative or entity (collectively, "**Claims**") related to this Agreement or the Future Site to the extent any such claim arises from or relates to any of the following circumstances during the Term: the active negligence, sole negligence or sole willful misconduct of CSU, CSU's Board of Trustees, and CSU's employees, agents, and attorneys (collectively, "**CSU Parties**") on or in connection with the Future Site. Notwithstanding the foregoing, CSU's indemnification obligations shall not apply to any Claims to the extent arising out of or directly or indirectly related to a breach of any of the City's express covenants, representations or warranties set forth in this Agreement, the Purchase Agreement or in any agreements entered into between the Parties at the closing under the Purchase Agreement, or the active negligence, sole negligence or sole willful misconduct of any of the Indemnified Parties. The City shall promptly notify CSU in writing of the City's receipt of any written notice of any Claims subject to CSU's indemnification. Upon receipt of such notification, CSU shall assume the defense of the Claim, including the employment of counsel reasonably satisfactory to the City and CSU. The City shall have ten (10) business days within which to approve or disapprove CSU's choice of counsel and if the City fails to respond in writing within such time period it shall be deemed to have approved CSU's choice of counsel. The City's approval of CSU's choice of counsel shall not be unreasonably withheld, conditioned or delayed. CSU's obligation to indemnify and defend the Indemnified Parties pursuant to this Agreement shall survive the expiration or termination of this Agreement, until any and all actual or prospective claims regarding any matter subject to such obligation are fully, finally, and completely barred by applicable statutes of limitations.

8. Insurance. During the Term, CSU shall secure and maintain one or more insurance policies, or adhere to its customary plan of self-insurance retentions, to provide insurance coverage in commercially reasonable amounts with respect to any damages, losses, or Claims that may arise from or relate to CSU's compliance, or failure to comply, with its obligations pursuant to this Agreement.

9. No Financial Responsibility. City shall have no obligation to pay any money or provide any financing related to development, construction, use, operation, maintenance, and repair of the Future Site, at any time throughout the Term. CSU shall have no obligation to pay any money or provide any financing related to development, construction, use, operation, maintenance, and repair of the Future Site, at any time after the effective date of the Lease.

10. No City Control. During the Term, CSU is and shall be in exclusive control and possession of the Future Site.

11. Notices. Any notice, demand or request required or desired to be given under this Agreement shall be given in writing via (a) personal service, (b) overnight courier that provides proof of delivery, or (c) first class registered U.S. Mail, prepaid and return receipt requested, and shall be addressed to the address of the Party to be served, as set forth in this Section 11. Any such notice shall be deemed delivered upon actual (or attempted but refused) delivery. Either Party may from time to time, by written notice to the other Party in accordance with this Section 11, designate a different address than that set forth below for the purpose of notice.

If to City: City of San Diego
 Parks and Recreation Department
 202 C Street, MS-39
 San Diego, CA 92101

If to CSU: [To be provided by CSU]

12. Default and Remedies.

12.1. A Party hereto shall be in breach of this Agreement if it defaults in the performance or fulfillment of any covenant or condition required to be performed or fulfilled under this Agreement, if it fails to cure such default within thirty (30) days after delivery by the other Party of written notice specifying the default, provided that if the default is not reasonably curable in such 30-day period, the Party alleged to be in default shall not be in breach of this Agreement as long as it commences to cure the default within such 30-day period and thereafter diligently pursues the cure to completion within sixty (60) days after such 30-day period.

12.2. Upon a breach of this Agreement by a Party, the non-defaulting Party may terminate this Agreement and/or seek any remedy in law or equity, including, but not limited to, declaratory, injunctive, or other equitable relief, and specifically enforce this Agreement, or restrain or enjoin a violation or breach of any provision of this Agreement.

13. Runs with the Land. The Parties declare their mutual and specific intent that this Agreement, and the covenants, conditions, restrictions, and reservations set forth in this Agreement, are part of a plan to improve the general welfare of the City's residents and promote economic and educational development with the territorial jurisdiction of the City. All covenants, conditions, restrictions, and reservations set forth in this Agreement shall be deemed covenants running with the land of the Future Site, binding upon each successor-in-interest of CSU in the Future Site for the duration of the Term. Regardless of classification or characterization, each of the covenants, conditions, restrictions, and reservations contained in this Agreement touch and concern the land of the Future Site and each of them is expressly declared to be for the benefit and in favor of the City for the Term, regardless of whether City is or remains an owner of any land or interest in land to which such covenants, conditions, restrictions, or reservation relates. If the Property is subdivided in the future, upon request by either Party, the Parties shall record an

amendment to this Agreement removing this Agreement from the record title of all portions of the Property other than the Future Site.

14. Adequate Consideration. The Parties agree that this Agreement is part of the transactions contemplated by the Purchase Agreement and that the various forms of consideration exchanged between the Parties pursuant to the Purchase Agreement includes adequate consideration for all promises and understandings memorialized in this Agreement.

15. Governing Law; Venue. The provisions of this Agreement shall be construed in accordance with and governed by the laws of the State of California, without regard to the conflicts or choice of law provisions thereof. CSU covenants and agrees to submit to the personal jurisdiction of any state court in the City of San Diego, State of California for any dispute, claim, or matter arising out of or related to this Agreement. The venue for any suit concerning this Agreement, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

16. Waiver. No failure of a Party to insist upon the strict performance by the other Party of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term of this Agreement shall continue in full force and effect without respect to any existing or subsequent breach. Time is of the essence with respect to the performance of every obligation of each Party under this Agreement in which time of performance is a factor.

17. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Whenever a reference is made in this Agreement to the Parties, such reference will include the successors and assigns of such Party under this Agreement.

18. Partial Invalidity. If any term, provision, or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by law.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement.

20. Entire Agreement; Amendments. This Agreement constitutes the entire agreement and complete understanding of the Parties with respect to the matters set forth in this Agreement and merges and supersedes all prior, oral and written, agreements, and understandings, and all contemporaneous oral agreements and understandings, of any nature whatsoever with respect to such subject matter. This Agreement may not be changed, modified,

amended, or waived except by a written agreement signed by duly authorized representatives of each Party. Any alleged oral amendments have no force or effect.

[Signature page follows]

IN WITNESS WHEREOF, a duly authorized representative of each Party has signed this Agreement, to be effective as of the Effective Date.

CITY:

Date: _____

City of San Diego,
a California municipal corporation

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

MARA W. ELLIOTT, City Attorney

By: _____

Kevin Reisch
Senior Chief Deputy City Attorney

CSU:

The Board of Trustees of the California State University,
the State of California acting in its higher education
capacity, on behalf of San Diego State University

Date: _____

By _____

Name: _____

Title: _____

APPROVED AS TO FORM:

SHEPPARD MULLIN RICHTER &
HAMPTON LLP

By: _____

Domenic C. Drago, Counsel for The
Board of Trustees of the California
State University, which is the State of
California acting in its higher
education capacity on behalf of San
Diego State University

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ (date), before me, _____
(name and title of notary public), personally appeared _____
(name of signer), who proved to me on the basis of satisfactory evidence to be the person whose
name is subscribed to the within instrument and acknowledged to me that he/she executed the
same in his/her authorized capacity, and that by his/her signature on the instrument, the person,
or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of Property

[to be attached]

EXHIBIT B

Depiction of Property with Future Site Identified

[to be attached based on Attachment 5 to the PSA]

EXHIBIT C

Lease Terms

1. Lease Term. A Lease term of ninety-nine (99) years commencing no earlier than ninety (90) days after CSU's completion of construction of the approximately 34 acre river park contiguous to the Future Site.
2. Due Diligence Period. A due diligence period will be provided.
3. Construction of Recreation Center. The City shall commence construction of the Recreation Center within four (4) years after the commencement of the Lease and shall complete construction of the Recreation Center within three (3) years after the commencement of such construction, subject to extension in the event of an Unavoidable Delay. "**Unavoidable Delay**" means a delay in completing construction of the Recreation Center on account of any cause beyond the City's reasonable control, including acts of God, fire, earthquake, flood, casualty, war, acts of terrorism, riots, regional natural disasters, pandemic, inability to obtain required materials or supplies, a labor dispute which results in a strike, work stoppage or other inability to obtain labor, environmental contamination, governmental delays (excluding delays directly caused by the City). Unavoidable Delay shall not, under any circumstances, include delay caused by or relating to the financial condition, insolvency, or inability to obtain financing on the part of the City.
4. Use and Condition. The City shall continuously operate a Recreation Center on the Future Site and the Recreation Center shall be open to the public consistent with City standards for other parks and recreation centers within the City of San Diego. The City may not use the Future Site for any purpose other than a Recreation Center. The Recreation Center shall be maintained by the City in a good condition of maintenance and repair at a standard consistent with CSU's buildings and facilities located on the Property. If the City ceases to operate the Recreation Center or fails to properly maintain the Recreation Center, then CSU may terminate the Lease.
5. Indemnification. The City shall defend, indemnify, and hold harmless CSU and its officers, agents, departments, officials, and employees (collectively, "**CSU Indemnified Parties**") from and against any Claims related to the Lease or the Future Site to the extent any such claim arises from or relates to any of the following circumstances during the Lease term: (a) the active negligence, sole negligence or sole willful misconduct of the City and the City's employees, agents, and attorneys (collectively, "**City Parties**") on or in connection with the Future Site, or (b) environmental liabilities resulting from the City's occupancy, use, development, maintenance, or restoration of the Future Site, including: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CSU response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, the City's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies. Notwithstanding the foregoing, the City's indemnification obligations shall not

apply to any Claims to the extent arising out of or directly or indirectly related to a breach of any of CSU's express covenants, representations or warranties set forth in the Lease, or the active negligence, sole negligence or sole willful misconduct of any of the CSU Indemnified Parties. CSU shall promptly notify the City in writing of CSU's receipt of any written notice of any Claims subject to the City's indemnification. Upon receipt of such notification, the City shall assume the defense of the Claim, including the employment of counsel reasonably satisfactory to the City and CSU. CSU shall have ten (10) business days within which to approve or disapprove the City's choice of counsel and if CSU fails to respond in writing within such time period it shall be deemed to have approved the City's choice of counsel. CSU's approval of the City's choice of counsel shall not be unreasonably withheld, conditioned or delayed. The City's obligation to indemnify and defend the CSU Indemnified Parties pursuant to the Lease shall survive the expiration or termination of the Lease, until any and all actual or prospective claims regarding any matter subject to such obligation are fully, finally, and completely barred by applicable statutes of limitations.

6. Expenses and Base Rent. The Lease will be a "Triple Net" lease. The City shall pay all applicable taxes and insurance, complete and pay for all maintenance and repairs, including capital repairs, during the Lease term. The City shall pay CSU nominal base rent (e.g., \$1.00 per year) for the Future Site.
7. Hazardous Substances. The City shall not knowingly allow the illegal installation, storage, utilization, generation, sale, or release of any hazardous substance or otherwise regulated substance in, on, under, or from the Future Site in violation of applicable law. The City and its agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Future Site in violation of applicable law. The City shall, prior to initiating any remediation that may be required due to a violation of the foregoing covenant, obtain all required permits from applicable regulatory agencies, including the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board.
 - a. Release. A "release" shall include any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a hazardous substance in violation of applicable law. Use of hazardous substances in reasonable amounts for the operation of equipment and machinery lawfully existing, installed or placed upon the Future Site shall be permitted without obtaining any further CSU consent.
 - b. Remediation. If the City's occupancy, use, development, maintenance, or restoration of the Future Site results in a release of a hazardous substance, the City shall pay all costs of remediation and removal required by applicable regulatory agencies for unrestricted reuse of the Future Site, and in accordance with law.
 - c. Removal. If the City or its contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring hazardous substances to the

Future Site, the City or its contractors or agents shall remove all hazardous substances in any type of container, equipment, or device from the Future Site immediately upon or prior to the expiration or earlier termination of the Lease. Upon CSU's request, the City shall deliver to CSU true copies of documentation demonstrating the legal removal and/or disposal of the hazardous substances, containers, equipment, or devices from the Future Site. If the City does not comply with the terms of this Section, the City shall be responsible for all costs incurred by CSU to remove any container, equipment, or device requiring disposal or removal as required by this provision.

- d. Notice of Release. If the City knows or has reasonable cause to believe that a hazardous substance has been released on, from, or beneath the Future Site in violation of law, the City shall immediately notify CSU and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable law. The City shall deliver a written report thereof to CSU within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by law. If the City knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, the City shall take all actions necessary to alleviate the danger. The City shall immediately notify CSU in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Future Site.
8. Advertising. The City shall not display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising at the Future Site without CSU's prior written consent. Customary signage related to events and activities specifically related to the use of the Recreation Center shall be allowed without CSU's prior written consent but subject to applicable law.
9. Subleasing. The City may not sublease all or any portion of the Future Site without CSU's prior written consent.
10. Assignment of Lease. The City may not assign the lease without CSU's prior written consent.
11. Compliance with Law. The City shall at all times comply with applicable law in connection with its use, management, and operation of the Recreation Center and Future Site and its exercise of all rights and performance of all duties and obligations under the Lease.
12. Lease Renewal. The City will have the right to extend the term of the Lease upon maturity based upon continued utilization of the property as a Recreation Center and the execution of an amendment to the Lease on terms acceptable to CSU and the City to be determined during the last twelve (12) months of the initial term.

13. No Limitation on Authority. Nothing in the Lease shall be deemed to limit, modify, abridge, abrogate or affect in any manner whatsoever, each party's governmental police power or regulatory authority under applicable law.

14. Insurance. The City shall procure and maintain for the duration of the Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under the Lease and the results of that work by the City, its agents, representatives, employees, or subcontractors.

14.1 The City shall maintain insurance coverage as follows:

(a) Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(b) Commercial Automobile Liability. For all of the City's automobiles including owned, hired, and non-owned automobiles, the City shall keep in full force and effect automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

(c) Property Insurance. Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

(d) Workers' Compensation. For all of the City's employees who are subject to the Lease and to the extent required by the applicable state or federal law, the City shall keep in full force and effect a Workers' Compensation policy. That policy shall provide a minimum of One Million Dollars (\$1,000,000) of employers' liability coverage per accident for bodily injury or disease, and the City shall provide an endorsement that the insurer waives the right of subrogation against CSU and its respective elected officials, officers, employees, agents, and representatives.

(e) Professional Liability (Errors and Omissions) Insurance. The limit shall be no less than \$2,000,000 per claim, \$2,000,000 aggregate.

(f) Cyber Liability Insurance. The limits shall not be less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the City in the Lease and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The

policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

14.2 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CSU before any work is initiated under the Lease.

(a) Commercial General Liability Insurance Endorsements:

(i) Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an insured CSU and its respective officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by the City or on the City's behalf, (b) the City's products, (c) the City's work, including but not limited to the City's completed operations performed by the City's or on the City's behalf, or (d) premises owned, leased, controlled or used by the City.

(ii) Primary and Non-Contributory Coverage. The policy must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or is primary to any insurance or self-insurance of CSU. Any insurance maintained by CSU and its elected officials, officers, employees, agents and representatives shall be in excess of the City's insurance and shall not contribute to it.

(b) Workers' Compensation Insurance Endorsements:

(i) Waiver of Subrogation. The Workers' Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CSU and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the City.

14.3 All Risk Property Insurance. All Risk Property Insurance Coverage may be procured and maintained by CSU for the Future Site. The City shall reimburse CSU for cost of said coverage premium costs and applicable deductibles.

14.4 Self-Insurance. It is understood and agreed that the City maintains various programs of self-insurance, insurance, and reinsurance providing the insurance coverages required in this Section and it is agreed that such programs may be acceptable means of providing the coverage required provided the coverage is at least as broad as required in this Section. The City shall provide documents in evidence of such coverage as required in this Section.